

**AN ASSESSMENT OF THE REGULATORY FRAMEWORK FOR OCCUPATIONAL  
SAFETY AND HEALTH SAFEGUARDS IN UGANDA'S OIL AND GAS INDUSTRY**

**John Fisher Kanyemibwa**

**REG.NO RM18M123/126**

**SUPERVISOR: Ms. Lydia Kakooza**

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**APRIL, 2021**

**DECLARATION**

I, **John Fisher Kanyemibwa** hereby declare that this dissertation is my work and it has not been submitted before to any other institution of higher learning for fulfilment of any academic award.

Signed.....

Date.....

**APPROVAL**

This is to certify that, this dissertation entitled “**An Assessment of the Regulatory Framework For Occupational Safety And Health Safeguards in Uganda’s Oil and Gas Industry**” has been done under my supervision and now it is ready for submission.

Signature.....

Ms. Lydia Kakooza.

Date.....

## **DEDICATION**

This work is dedicated to my beloved parents, Christopher Kanyemibwa and Anastasia Kanyemibwa, both now deceased. The education seed you selflessly planted with great sacrifice has since blossomed and multiplied exponentially. Your memory will always be cherished.

## ACKNOWLEDGMENT

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## TABLE OF CONTENTS

<b>DECLARATION</b> .....	<b>i</b>
<b>APPROVAL</b> .....	<b>ii</b>
<b>DEDICATION</b> .....	<b>iii</b>
<b>ACKNOWLEDGMENT</b> .....	<b>iv</b>
<b>LIST OF FIGURES</b> .....	<b>viii</b>
<b>LIST OF LEGISLATIONS</b> .....	<b>ix</b>
<b>LIST OF STATUTORY INSTRUMENTS</b> .....	<b>ix</b>
<b>LIST OF CASES</b> .....	<b>xi</b>
<b>LIST OF ACRONYMS</b> .....	<b>xii</b>
<b>ABSTRACT</b> .....	<b>xiii</b>
<b>CHAPTER ONE: GENERAL INTRODUCTION</b> .....	<b>1</b>
<b>1.0 Introduction</b> .....	<b>1</b>
1.1 Background to the Study .....	3
1.1.1 A Historical Background of Occupational Safety and Health .....	3
1.2 Problem Statement .....	8
1.3 Study Objectives .....	9
1.3.1 Main Objective.....	9
1.3.2 Specific Objectives .....	9
1.3.3 Research Questions.....	9
1.4 Significance of the Study .....	10
1.5 Justification for the Study .....	11
1.6 Scope of the Study.....	11
1.6.1 Time Scope .....	11
1.6.2 Geographic Scope .....	12
1.6.3 Subject Scope.....	12
1.7 Arrangement of Chapters .....	12
1.8 Definition of Key Terms Used in the Study.....	13
<b>CHAPTER TWO: LITERATURE REVIEW</b> .....	<b>15</b>
2.0 Relevance of National OSH Regulation.....	15

2.1	Role of Legislation in Effective OSH Regulation .....	17
2.2	Uganda’s OSH Legislative Framework in Relation to International Standards .....	20
2.3	Research Framework .....	22
2.4	Theoretical Framework.....	23
2.5.	Conclusion .....	25
<b>CHAPTER THREE: METHODOLOGY .....</b>		<b>26</b>
<b>3.0 Introduction.....</b>		<b>26</b>
3.1	Doctrinal Research Design.....	26
3.1.1	Characteristics of Doctrinal research methodology .....	26
3.1.2	Benefits of Doctrinal Research Methodology.....	27
3.2	Comparative Legal Research Method .....	27
3.3	Data Collection Methods .....	28
3.4	Data Collection Tools.....	29
3.5	Ethical considerations .....	29
3.6	Limitations of the study.....	29
3.7	Conclusion.....	29
<b>CHAPTER FOUR: INTERNATIONAL LEGAL FRAMEWORK FOR HEALTH AND SAFETY SAFEGUARDS.....</b>		<b>31</b>
<b>4.0 Introduction.....</b>		<b>31</b>
<b>4.1 International Labour Standards and OSH regulation.....</b>		<b>31</b>
4.1.1	The Labour Inspection Convention, 1947 (No. 81) .....	32
4.1.2	The Radiation Protection Convention, 1960 (No. 115) .....	33
4.1.3	The Occupational Cancer Convention, 1974 (No. 139).....	34
4.1.4	Promotional Health Services Convention, 1985 (No. 161).....	34
4.1.5	Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)	35
4.1.6	The Chemicals Convention, 1990 (No.170).....	35
4.1.7	The Prevention of Major Industrial Accidents Convention, 1993 (No. 174).....	36
4.1.8	The Occupational Safety and Health Convention, 1981 (No. 155) .....	37
<b>4.2 Assessment of Uganda’s status on International Standards.....</b>		<b>38</b>
4.3	Conclusion .....	40

<b>CHAPTER FIVE: BEST INTERNATIONAL PRACTICES ON HEALTH AND SAFETY SAFEGUARDS .....</b>	<b>41</b>
<b>5.0 Introduction.....</b>	<b>41</b>
5.1 Legal framework for SHCs in Norway .....	42
5.1.1 Safety Committee Duties .....	43
5.1.2 Election of Members of the Working Environment Committees .....	43
5.1.3 Processes of Working Environment Committees .....	44
5.1.4 Training of members of the Working Environment Committees .....	45
5.2 Legal framework of Health and Safety Committees in South Africa .....	45
5.2.1 Composition of the Health and Safety Committees.....	47
5.2.2 Meetings of the Health and Safety Committees .....	47
5.2.3 Procedures of the Health and Safety Committees .....	47
5.3 Conclusion.....	48
<b>CHAPTER SIX: UGANDA’S OIL AND GAS REGULATORY FRAMEWORK ON HEALTH AND SAFETY SAFEGAURDS.....</b>	<b>50</b>
<b>6.0 Introduction.....</b>	<b>50</b>
6.1 Safety and Health Committees under OSHA.....	50
6.2 Safety and Health Committees in the Upstream Sector .....	54
6.3 Safety and Health Committees in the Midstream Sector .....	55
6.4 Conclusion.....	57
<b>CHAPTER SEVEN: FINDINGS, RECOMMENDATIONS AND CONCLUSIONS.....</b>	<b>58</b>
<b>7.0 Study Findings.....</b>	<b>58</b>
<b>7.1 Recommendations .....</b>	<b>59</b>
7.1.1 A renewed OSH approach.....	59
7.1.2 Domestication of OSH international standards.....	60
7.1.3 Amendment to OSHA .....	60
7.1.4 Regulatory Best Practices for Safety Health Committees.....	60
7.1.5 Further Research .....	61
<b>REFERENCES.....</b>	<b>62</b>



## **LIST OF FIGURES**

1. Figure 1: Albertine Graben Upstream Oil and Gas Assets (2020)
2. Figure 2: The Systems Theory Model

## **LIST OF LEGISLATIONS**

### **List of Statutes**

Uganda Statutes

The Atomic Energy Act, 2000

The Constitution of the Republic of Uganda, 1995

The Employment Act of 2006

The Law Reform Commission Act, Cap. 25

The Occupational Safety and Health Act, Act 9 of 2006

The Petroleum (Exploration, Development and Production) Act 3 of 2013

The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 4 of 2013

The Public Health Act

The Ratification of Treaties Act, Cap. 204

The Workers Compensation Act, 2009

### **Norwegian Statute**

The Petroleum Act 29, 1996 No. 72

Working Environment Act No. 62 of 2005

### **South African Statute**

The Occupational Health and Safety Act, No. 85 of 1993

### **List of Statutory Instruments**

#### **Uganda Regulations**

The Employment Regulations of 2011

The National Environmental (Noise Standards and Control) Regulations, 2003

The Occupational Safety and Health (Plant Examination and Workplace Registration Fees) Regulations, SI 87 of 2014

The Petroleum (Exploration, Development and Production) Health Safety and Environment) Regulations, SI No. 64 of 2016

The Petroleum (Refining, Conversion, Transmission and Midstream Storage) (Health, Safety and Environment) Regulations SI No. 35 of 2016

### **Norwegian Regulations**

Regulations concerning Organisation Management and Employee Participation

### **LIST OF INTERNATIONAL CONVENTIONS**

Labour Inspection Convention, 1947 (No.81);

Occupational Cancer Convention, 1974 (No.139)

Prevention of Major Industrial Accidents Convention, 1993 (No. 174)

Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

Promotional Health Services Convention, 1985 (No. 161)

The Chemicals Convention of 1990 No. (170)

The Occupational Health and Safety Convention, 1981(No. 155)

The Radiation Protection Convention, 1960 (No. 115)

The Working Environment (Air Pollution, Noise and Vibration Convention, 1960

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National Oil and Gas Policy for Uganda, February, 2008

## **LIST OF CASES**

### **South Africa**

Joubert vs Buscor Proprietary Limited (2013/13116) [2016] ZAG PPHC 1024

### **Uganda**

David B. Kayondo vs The Cooperative Bank Ltd Civil Appeal No. 10 of 1991 (SC)

### **United Kingdom**

Edwards vs National Coal Board [1949] 1 ALL ER 743

## LIST OF ACRONYMS

<b>DOSH</b>	Department of Occupational Safety and Health
<b>ILO</b>	International Labour Organisation
<b>IOC</b>	International Oil Company
<b>ICJ</b>	International Court of Justice
<b>HSC</b>	Health and Safety Committees
<b>MGLSD</b>	Ministry of Gender Labour and Social Development
<b>OGI</b>	Oil and Gas Industry
<b>OSH</b>	Occupational Safety and Health
<b>OSHA</b>	Occupational and Health Safety Act
<b>PAU</b>	Petroleum Authority of Uganda
<b>PEDPA</b>	Petroleum (Exploration, Development and Production) Act
<b>PPE</b>	Personal Protection Equipment
<b>PRCTMSA</b>	Petroleum (Refining Conversion, Transmission and Midstream Storage), Act
<b>SHC</b>	Safety Health Committees
<b>UN</b>	United Nations
<b>USA</b>	United States of America
<b>WECs</b>	Working Environment Committees

## **ABSTRACT**

Uganda is in an advanced stage of extracting oil from the Albertine Region to drive economic development. However, in as much as oil is a highly useful resource, its extraction and processing have world over been associated with occupational health and safety incidents and environmental disasters. Scholars have contended that legislation is key in mitigating the said incidents.

Against the above background, this research critically assessed Uganda' regulatory framework for safeguards for prevention of occupational safety incidents in the said industry with special focus on work safety and health committees which are key to the safety of the work environment in the said industry. The study adopted the doctrinal research method and the comparative research method. The provisions of various laws regulating work safety committees in the oil and gas industry were evaluated against international standards for their adequacy in ensuring a safe working environment in the upstream and midstream sectors. The regulatory framework for safety and health committees in Uganda was compared with the regulatory framework of the same safeguards in Norway and South Africa.

The study revealed that Uganda is yet to ratify key international standards on workplace safety in the oil and gas industry and its regulatory framework for workplace safety committees is dysfunctional with an attendant risk that the said industry is likely to register occupational safety and health incidents which would otherwise be mitigated by a regulatory framework that is compliant with international standards.

## CHAPTER ONE: GENERAL INTRODUCTION

### 1.0 Introduction

Oil and gas processes world over are riddled with Occupational Safety and Health (OSH) incidents.<sup>1</sup> The incidents range from injuries, diseases and fatalities which are attributable to the hazards in the said industry.<sup>2</sup> The scale of the reported OSH incidents is rather alarming. In 2016 the Oil and Gas Industry (OGI) in the African region reportedly registered the second highest number of fatalities next to the North American region.<sup>3</sup> A 2017 study established that out of the reported 6,300 global daily fatality OSH incidents from 2014-2016 nearly half of the said incidents were attributed to the hazardous environment in the OGI.<sup>4</sup>

Uganda is currently progressing towards oil production.<sup>5</sup> The OGI became prominent in 2006 when commercial quantities of oil reserves were discovered in the Albertine region, Western Uganda.<sup>6</sup> With successive discoveries, by 2014 the reserves in the said region were estimated to be 6.5 Billion barrels out of which it is anticipated that approximately 1.4 Billion barrels will be recovered.<sup>7</sup> At an extraction rate of 100,000 barrels per day it is expected that the oil reserves will last up to 40 years.<sup>8</sup> Besides the oil reserves Uganda is also endowed with approximately 500billion cubic feet of natural gas.<sup>9</sup>

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<sup>1</sup> Karen Niven and Ron McLeod, 'Offshore Industry: management of health hazards in the upstream petroleum industry', Occupational Medicine, (2009) 59 304-309 [www.researchgate.com](http://www.researchgate.com) accessed on 20<sup>th</sup> January, 2020

<sup>2</sup> Niven (n 1)

<sup>3</sup> ILO, 'Occupational safety and health in the oil and gas industry in selected sub-Saharan African Countries', International Labour Organisation Sectoral Policies Department (2017) [www.ilo.org](http://www.ilo.org) accessed on 20<sup>th</sup> January, 2020

<sup>4</sup> Moahamed Younes El Bouti & Mohammed Allouch, 'Analysis of 801 Work- Related Incidents in the Oil and Gas Industry That Occurred Between 2014 and 2016 in 6 Regions', Energy and Environment Research; Vol 8, No. 1, 2018 [www.researchgate.net](http://www.researchgate.net) accessed on 20<sup>th</sup> January, 2020

<sup>5</sup> Ministry of Energy and Mineral Development, 'Press Statement on Current Status of Uganda's Oil and Gas Sector at End of Year Briefing', (Thursday, Dec 20, 2018) [www.pau.ug](http://www.pau.ug) accessed on 20<sup>th</sup> January, 2020

<sup>6</sup> Terrel Manyak, 'Oil and Governance in Uganda', (2015), Research Gate [www.researchgate.net](http://www.researchgate.net) accessed on 20<sup>th</sup> January, 2020

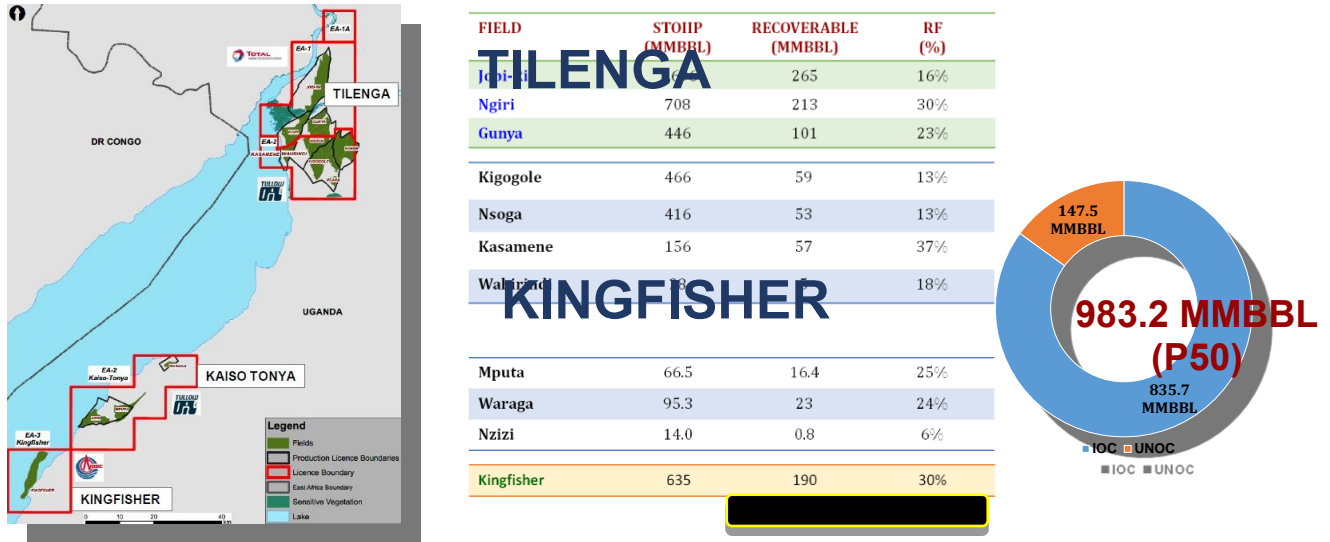
<sup>7</sup> Supra, (n 5)

<sup>8</sup> Manyak, (n 6)

<sup>9</sup> Ibid

In a bid to explore, develop and produce oil Uganda has licensed several International Oil Companies (IOCs).<sup>10</sup> Figure 1 depicts the discovered oil reserves and the current upstream activities in the Albertine region.

**Figure 1: Albertine Graben Upstream Oil and Gas Assets (2020)**



**Source: PAU website**

The OSH incidents mentioned above have happened in oil producing countries inspite of the OSH regulatory frameworks designed to curtail the same incidents. The occurrence of the said incidents invites a question as to whether the OSH safeguards in Uganda’s OSH regulatory framework are adequate.

It is against the above introduction that the study undertakes an assessment of legislation providing for OSH safeguards in Uganda’s oil and gas industry vis-à-vis international safety standards to determine its effectiveness in ensuring occupational health of the various players in Uganda’s OGI. A conclusion will be made on the basis of the findings.

<sup>10</sup> Manyak, (n 6)



## **1.1 Background to the Study**

The background to the study gives a brief historical development of OSH regulatory framework during the industrial revolution in England, the imposition of foreign laws on Uganda with the advent of Uganda's colonization by Britain and the post-independence period.

### **1.1.1 A Historical Background of Occupational Safety and Health**

Uganda has not always had OSH laws. Its legislative framework in general is a legacy of the colonial regime following colonization by Britain towards the beginning of the nineteenth century.<sup>11</sup> The said laws are rooted in the legal superstructure that emerged during the industrial revolution in England. According to Davies Eves, OSH laws were developed around the said period to ameliorate the excesses of the flourishing capitalism that had no regard to the workers' safety.<sup>12</sup>

To prevent ill health and high accident rates caused by excessive work, the Factory Act of 1833 created an inspectorate for enforcement of restrictions on children's working hours in cotton mills.<sup>13</sup> The same law capped the working time for women and made a provision for safeguards in the areas of the textile mills where women and children were deployed.<sup>14</sup>

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<sup>11</sup> Joan Vincent, 'Contours of Change: Agrarian Law in Colonial Uganda, 1895-1962' in June Starr and Jane F Collier (Eds), *History and Power in Law, New Directions in Legal Anthropology*, (Cornell University Press 1989) <https://about.jstor.org> accessed on 19<sup>th</sup> January, 2020

<sup>12</sup> Davies Eves, 'Two Steps forward, one step back- A brief history of the origins, development and implementation of health and safety in United Kingdom, 1802-2014', National Occupational Safety Committee (NOSHC) [www.historyofosh.org.uk](http://www.historyofosh.org.uk) accessed on 24<sup>th</sup> January, 2020

<sup>13</sup> BL Hutchins, A Harrison and Sydney Webb, A history of factory legislation, (Political Science Quarterly, Vol 18 No 3 (Sept 1903) [www.jstor.org](http://www.jstor.org) accessed on 26<sup>th</sup> January, 2020

<sup>14</sup> Ibid

The need for a better OSH regulatory framework continued up to 1840 when findings on the inhuman working conditions in mines were published by the Royal Commission.<sup>15</sup> As a result of the findings in the Royal Commission Report, the Mines Act of 1842 was enacted and created the Mines Inspectorate which oversaw OSH improvement in the mining industry.<sup>16</sup>

Uganda's colonization introduced foreign laws for the first time in Uganda as part of the colonial superstructure to foster the colonial cash economy.<sup>17</sup> Before the advent of British colonialism in Uganda, the tribal kings, chiefs and clan leaders were enforcing customary laws in their respective communities.<sup>18</sup>

The concept of occupational safety was unknown under customary law. For instance, according to Joan Vincent, able bodied men in Buganda that were compelled to work on public projects under what was traditionally known as *kasanvu and luwalo* were being flogged to extort their labour.<sup>19</sup> Traditionally, conscription to provide the said labour which was considered degrading depended on one's social class.<sup>20</sup> By implication the highest burden of the said OSH abuses fell on the peasants.

The introduction of foreign laws to Uganda was achieved through the enactment of the 1902 Uganda Order-in-Council by the British government. By virtue of this law, English statutes of general application, the common law and principles of equity became part of Uganda

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<sup>15</sup> O P Edmonds and E L Edmonds, 'An Account of the Founding of H. M. Inspectorate of Mines and the Work of the First Inspector Hugh Seymour Tremenheere' Br J Ind Med 1963 20(3)210-217 [www.ncbi.nlm.nih.gov](http://www.ncbi.nlm.nih.gov) accessed on 26<sup>th</sup> January, 2019

<sup>16</sup> Ibid

<sup>17</sup> Vincent, (n 11)

<sup>18</sup>Anthony Allot, 'The Unification of Laws in Africa', *The American Journal of Comparative Law*, Vol 16 No. ½ (1968) pp 51-87 [www.jstor.org](http://www.jstor.org) accessed on 20<sup>th</sup> January, 2020

<sup>19</sup> Joan, (n 11)

<sup>20</sup>Opolot Okia, 'Virtual Abolition: The Economic Lattice of Luwalo Forced Labour in the Uganda Protectorate', Research Gate, January, 2017 [www.researchgate.net](http://www.researchgate.net) accessed on 22<sup>nd</sup> June, 2020

Protectorate's legal superstructure.<sup>21</sup> The customary law hitherto enforced in various communities in Uganda was to continue to be applied provided it was not repugnant to justice and morality.<sup>22</sup> Interestingly, the OSH abuses under *kasanvu and luwalo* continued unabated for some time in spite of the 1902 Order in Council proscribing noncompliant customary law.<sup>23</sup> It can be argued that the colonial government tolerated the said abuses because the public projects built through the said system were part of the colonial infrastructure.

As the colonial cash economy took hold and with the introduction of factories to process cotton and coffee, the colonial regime passed the Factories Ordinance, 1952. This law provided for the inspection and the powers of inspectors to enforce a safe working environment in the factories.<sup>24</sup> The said law was replaced by the Factory Ordinance 1953 which introduced comprehensive safeguards for a safe working environment.<sup>25</sup> The safeguards included provision for a clean working environment,<sup>26</sup> ventilation<sup>27</sup>, protection from moving parts,<sup>28</sup> training and supervision of inexperienced workers,<sup>29</sup> precautions in case of explosive or inflammable gases<sup>30</sup> and criminal offences for breach of the occupier's or factory owner's statutory duties.<sup>31</sup> It can be argued that the real purpose of the colonial OSH laws was not to safeguard the workers but to promote the colonial agenda of enhancing production by limiting cases of injuries, diseases and fatalities which would otherwise interrupt production.

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<sup>21</sup> Joan, (n 11)

<sup>22</sup>Joan, (n 11)

<sup>23</sup>Joan, (n 11) Ibid pg. 161

<sup>24</sup> MGLSD, 'Occupational Safety and Health Profile for Uganda, August, 2004' [www.mnservices.ug](http://www.mnservices.ug) accessed on 21<sup>st</sup> January, 2020 p. 38

<sup>25</sup> Long title Ordinance No. 3 of 1953

<sup>26</sup> Ibid, S. 13

<sup>27</sup>Ordinance No. 3 of 1953, S. 15

<sup>28</sup>Ordinance No. 3 of 1953, S. 19

<sup>29</sup>Ordinance No. 3 of 1953, S. 29

<sup>30</sup>Ordinance No. 3 of 1953, S. 35(1)

<sup>31</sup>Ordinance No. 3 of 1953, S. 72(1)

After independence, the legal superstructure and economic substructure that existed during the colonial period substantially remained the same. The English legal system which was imported in Uganda under the 1902 Order-in-Council continued to influence the country's post-independence legislation.<sup>32</sup> In this regard the post-independence Factories Act<sup>33</sup> which was enacted in 1964 is noted for largely having been a replica of the colonial Factories Ordinance, 1953.<sup>34</sup> The safeguards in the OSH legal framework were in 1995 buttressed by the creation of a constitutional right to a safe environment for every Ugandan.<sup>35</sup> It can be argued that the enactment of the Occupational Health and Safety Act (OSHA)<sup>36</sup> that repealed the Factories Act<sup>37</sup> was done in an effort to improve a safe working environment in a bid to realise the constitutional right to a healthy environment. Among the new safeguards introduced by this law were safety health committees.<sup>38</sup>

With the viability of the OGI having been established in 2006 when commercial quantities of oil were discovered in Uganda, a regulatory framework for the said industry was in 2013 put in place. The Petroleum (Exploration Development and Production) Act (PEDPA)<sup>39</sup> was enacted for regulation of the upstream sector. The Petroleum (Refining Conversion, Transmission and Midstream Storage) Act (PRCTMSA)<sup>40</sup> was enacted in the same year for the regulation of the midstream sector. The said laws were designed to provide inter alia for specific OSH regulation in the said industry and to address the current and prevalent OSH issues in the said sector.

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<sup>32</sup> Ronald J Daniels, Michael J Trebilcock and Lindsey D Carson, 'The Legacy of Empire: The Common Law Inheritance and Commitments to Legality in Former British Colonies', *The American Journal of Comparative Law* Vol. 59 No 1(2011) [www.jstor.org](http://www.jstor.org) accessed on 22<sup>nd</sup> January, 2020

<sup>33</sup> Cap 198 Laws of Uganda 1964

<sup>34</sup> Ordinance No. 3 of 1953

<sup>35</sup> Article 39 of the Uganda, Constitution

<sup>36</sup> OSHA, S. 121

<sup>37</sup> Cap. 198, Laws of Uganda, 1964 Edition

<sup>38</sup> OSHA, S.16

<sup>39</sup> Act 3 of 2013

<sup>40</sup> Act 4 of 2013

It is appropriate that before oil and gas OSH regulation in Uganda is considered, a historical background to the emergence of OSH regulatory framework for the petroleum industry be highlighted.

It is an established fact that oil and gas processes world over are hazardous.<sup>41</sup> According to Ryan Milford, historically, unlike other sectors such as railways where there were OSH improvements by 1890, no similar improvements existed for the OGI.<sup>42</sup> OSH incidents in the USA were remarkably widespread and considered as part of the cost of doing business.<sup>43</sup> Notably, in 1913 alone the death toll in the USA oil industry was 23,000 persons.<sup>44</sup> The OSH incidents continued unabated until the disastrous natural tanker explosion at Cleveland, Ohio on 20<sup>th</sup> October, 1944 which destroyed property over a two square mile area and killed 130 people.<sup>45</sup> That incident led to reforms that resulted into the first law to regulate workplace safety in 1947.<sup>46</sup> However, extensive OSH regulatory powers over the oil and gas industry in the USA were introduced for the first time in 1970 upon the enactment of Job Safety Law.<sup>47</sup> With the Alpha oil rig disaster of 1988 where 167 perished which led to international outcry, more advanced protective measures were introduced to protect workers in the said industry.<sup>48</sup>

As Uganda continues on the journey to exploit her oil resources, lessons from the disastrous history of the said industry need to be taken to ensure that the regulatory framework for OSH safeguards

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<sup>41</sup> Kathryn Mearns, Rhona Flin, 'Risk perception and attitudes to safety by personnel in offshore oil and gas industries: a review', Vol. 8 Issue No. 5 (1995) [www.sciencedirect.com](http://www.sciencedirect.com) accessed on 20<sup>th</sup> January, 2020

<sup>42</sup> Rayn Milford, 'A Brief History of Safety in the Oil and Gas industry' Ryan Education, Oil and Gas (June, 2018) <https://www.superiorglove.com> accessed on 25<sup>th</sup> January, 2020

<sup>43</sup> Ibid

<sup>44</sup> Milford (n 42)

<sup>45</sup> Ibid

<sup>46</sup> Milford (n 42)

<sup>47</sup> Ibid

<sup>48</sup> Milford (n 42)

in place serves its intended purpose, which is among others, guarding against the occurrence of OSH incidents in the said industry.

However, the question is, will Uganda's OSH regulatory framework for the oil and gas sector hold fort against the likely OSH incidents in the said industry?

From the above exposition the study seeks to assess Uganda's OSH regulatory framework on safeguards for its OGI with a view to establish its effectiveness and propose possible measures for its improvement.

## **1.2 Problem Statement**

In line with Uganda Constitution which creates a right to a safe environment, the regulatory framework for OGI which was established in 2013 provides for OSH regulation of the said industry. The said framework consists of PEDPA and PRCTMSA which adopt OSHA as the principal legislation and provides for several OSH safeguards which are designed to prevent the occurrence of OSH incidents and thereby ensure a safe environment for the persons working in or interacting with the said industry.

Some studies have established that the adequacy of OSH safeguards in a national regulatory framework is linked to International Labour Conventions which provide for minimum standards for a safe working environment.<sup>49</sup> Poor OSH outcomes in terms of incident prone working environment have been reported in countries that are yet to ratify the said Conventions.<sup>50</sup> Uganda

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<sup>49</sup>Muge Akpimar-Elci and Others, 'Assessment of current occupational safety and health regulations and legislation in the Caribbean', Pan American Journal of Public Health (2017) [www.scielosp.org](http://www.scielosp.org) accessed on 26<sup>th</sup> January, 2020

<sup>50</sup>Ibid

has since 1963 been a member of ILO.<sup>51</sup> However, the country is yet to ratify several Conventions that are relevant for OSH regulation of the OGI.<sup>52</sup>

The fact that Uganda is yet to ratify the said Conventions raises the question whether the safeguards currently provided for in the said framework are adequate for the regulation of the OGI.

Thus, the study seeks to assess Uganda's oil and gas regulatory framework for OSH safeguards with a view to establish whether there are any existing gaps in the law with a view to make policy recommendations for reforms.

### **1.3 Study Objectives**

#### **1.3.1 Main Objective**

To assess the regulatory framework for OSH safeguards in Uganda's oil and gas industry.

#### **1.3.2 Specific Objectives**

- i. To assess the regulatory framework for OSH safeguards in Uganda's oil and gas industry.
- ii. To assess the relevance of international labour standards in the enforcement of OSH safeguards.
- ii. To analyse the extent to which OSH regulatory framework in Uganda contributes to the effectiveness of OSH safeguards in the OGI.
- iii. To propose recommendations premised on the study conclusions.

#### **1.3.3 Research Questions**

- i. What is the international regulatory framework for OSH safeguards in the OGI?

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<sup>51</sup>International Labour Organisation, 'Up-to-date Conventions and Protocols not ratified by Uganda', International Labour Organisation International Labour Organisation, 'Up-to-date Conventions and Protocols not ratified by Uganda' 1996-2017 [www.ilo.org](http://www.ilo.org) accessed on 20<sup>th</sup> January, 2020

<sup>52</sup>Ibid

- ii. To what extent does OSH regulatory framework in Uganda contribute to the prevention of OSH incidents in the OGI?
- iii. What conclusions and recommendations can be made from the study findings?

#### **1.4 Significance of the Study**

OSH in the oil and gas processes is a major concern for the players in the said industry, particularly, the workers, their family members and the country in general. The fatalities, injuries and diseases adversely affect production in terms of absence from work which negatively affect the economy by leading to financial loss, not only to the employers but the country in general.<sup>53</sup>

Globally the financial losses attributable to compensations arising out of OSH incidents are annually estimated to be 4% of the Gross National Production.<sup>54</sup> With the reported losses ascribed to the said incidents, Uganda is unlikely to meet its development goals without putting in place and enforcing a regulatory framework that ensures safety at work.

In spite of the above grim picture, currently the public debate on the said industry appears to be concentrated on local content and the management of the anticipated oil revenues. As Ncumbwe and Kanda rightly observe,<sup>55</sup> there is a dearth of scholarly research in OSH statutory framework to propose improvements.<sup>56</sup> The study posits that the law should as far as possible provide for the highest standards of safety to mitigate the OSH incidents that are likely to arise in Uganda's nascent OGI.

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<sup>53</sup>Benjamin O Alli, *Fundamental Principles of Occupational Health and Safety*, International Labour Office- Geneva: ILO (2008) <https://www.ilo.org> accessed on 20<sup>th</sup> January, 2020

<sup>54</sup> Ibid

<sup>55</sup>France Ncumbwe and Artwell Kanda, 'Commentary on the Organisation of Occupational Health and Safety in Southern Africa, the International Labour Organization and Policies in General', *Global Health* (August, 2018) 84(3):500-503 [www.nchi.nlm.gov](http://www.nchi.nlm.gov) accessed on 20<sup>th</sup> January, 2020

<sup>56</sup> Ibid



Considering that this study will propose recommendations for mitigating the identified gaps in Uganda's OSH framework for OGI, it is expected that the said recommendations will inform policy makers on the possible steps for reforms.

In the absence of any published work focusing on the OSH regulatory framework for safeguards in Uganda's OGI this study will open up space for more researchers into this critical area, thereby making further contribution to knowledge.

## **1.5 Justification for the Study**

The literature on Uganda' OSH regulatory framework for OGI reviewed in this study begs further research in said framework in relation to the international OSH standards to understand the effectiveness of OSH safeguards and in particular, the safety committees. The unanswered questions in the existing literature on the said subject make it worthwhile for further research on the subject to be undertaken. The inherent OSH risks associated with the said industry make it imperative that scholars engage in further research on the OSH preventive measures for the said industry to address any existing gaps in the said framework. This research is an attempt to make a contribution in the said area.

## **1.6 Scope of the Study**

### **1.6.1 Time Scope**

This study will consider the existing OSH regulatory framework for the OGI from 1995 when the Constitution of Uganda was promulgated to the present. While there were no oil and gas activities in the country then, the OSH regulatory framework that emerged subsequent to the discovery of commercial quantities of oil and gas in 2006 is premised on the said Constitution. The laws that provide for preventive measures to ensure a safe working environment include the Employment Act and OSHA which was subsequently adopted in 2013 by PEDPA and PRCTMSA as the

principal OSH legislation. The regulations issued under the said laws in 2016 also provide for preventive measures to ensure a safe working environment.

### **1.6.2 Geographic Scope**

The research is premised on the Albertine region, Western Uganda where the oil and gas processes are currently taking place. This area covers Buliisa and Hoima districts.<sup>57</sup>

However, given that OSH incidents have a ripple effect in as far they are adversely felt not only by the workers but also their family members, the communities neighbouring the unsafe working environment and ultimately the country at large, the study is premised on the entire country.

### **1.6.3 Subject Scope**

The study will cover relevant legislation and institutions responsible for regulation of OSH in the said industry with a view to assess the adequacy of the safeguards provided for in the laws regulating OSH in the OGI. Many safeguards are provided for in the law. The time and space for this study cannot accommodate consideration of all the safeguards. The study will mainly consider the regulatory framework for workplace safety committees.

## **1.7 Arrangement of Chapters**

The study consists of seven chapters. Chapter One presents the general background to the study, the statement of the research problem, objectives of the study, research questions, significance of the study, justification of the study and the scope of the study.

Chapter Two deals with literature review on the effectiveness of OSH legal regulatory framework for safeguards, both international and Uganda's national legal frameworks.

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<sup>57</sup>David Mwesigye Musigye Tumusiime, Joseph Mawejje and Patrick Byakagaba, 'Discovery of Oil: Community Perceptions and Expectations in Uganda's Albertine Region, Research Gate (2016) [www.researchgate.net](http://www.researchgate.net) accessed on 21<sup>st</sup> January, 2020

Chapter Three presents the research methodology. The doctrinal research design and the comparative legal research method are highlighted. Data collection methods, data tools, ethical considerations and the limitations to the study are also presented in the said chapter.

Chapter Four presents an analysis of the International Legal Framework for OSH in the OGI. The relationship between the international standards and Uganda's OSH legal framework is also discussed.

Chapter Five discusses international best practices for safety health committees (SHCs), the key safeguards identified by the study for the prevention of the unsafe working environment. It provides an analysis of the regulatory framework for SHCs in two countries, namely, Norway and South Africa which have adopted the relevant international standards in the national OSH legal framework.

Chapter Six presents a comparative analysis of the regulatory framework for SHCs in Norway and South Africa with the legal framework for the said safeguards in Uganda.

Chapter Seven presents a Summary of Findings, Conclusion and recommendations.

## **1.8 Definition of Key Terms Used in the Study**

**Occupational Health and Safety:** Occupational Health and Safety involves preventive measures designed to ensure the workers' safety and welfare at the workplace.<sup>58</sup> The overriding objective of this concept is the workers' safety at the workplace.<sup>59</sup> Broadly, it seeks not only the safety of the worker but also the worker's family members, the employer and all persons such as customers that are likely to be adversely impacted by the unsafe working environment.<sup>60</sup>

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<sup>58</sup>Bagmita Bhagawati, 'Basics of Occupational Safety and Health', IOSR Journal of Environmental Science, Toxicology and Food Technology, Volume 9, Issue 8 Ver 1 (Aug 2015) pp 91-94 [www.iosrjournals.org](http://www.iosrjournals.org) accessed on 24<sup>th</sup> January, 2020

<sup>59</sup> Bagmita (n 58)

<sup>60</sup> Ibid

According to ILO, OSH extends to “the promotion and maintenance of a high degree of physical, mental, and social well-being of workers in all occupations”.<sup>61</sup>

**Regulatory framework:** The term “regulatory framework” encompasses the laws, regulations and policies developed by the government for regulating a given sector.<sup>62</sup> For instance, OSHA, the Employment Act, the oil and gas laws of 2013, the regulations issued under the said laws and the government policies relating to OSH broadly constitute Uganda’s OSH regulatory framework regulating oil and gas processes. According to Selznick P, regulation is “sustained and focused control exercised by a public agency over activities valued by the community”<sup>63</sup> However, Balak Orbach argues that regulation is not necessarily restrictive as often defined. He defines regulation as “government’s intervention in the private domain or the legal rule that implements that intervention”.<sup>64</sup> Orbach’s definition is preferred for this study as it encompasses both prescriptive and persuasive regulatory approaches in Uganda’s OSH regulatory framework.

**Safeguards:** The term safeguard broadly encompasses preventive measures that are designed to ensure a safe working environment.<sup>65</sup> The said measures include Personal Protection Equipment (PPE), penalties for OSH breaches and safety committees among others.

The safeguards are provided for in various laws including OSHA, the Employment Act, PEDPA, Radiation Act, PRCTMSA and the Regulations under the said laws.

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<sup>61</sup> ILO, Occupational Health services and Practice-ILO Encyclopedia (2011) <https://www.iloencyclopaedia.org> accessed on 27<sup>th</sup> January, 2020

<sup>62</sup> David Levi-Faur, ‘Regulation & Regulatory Governance’, Jerusalem Papers in Regulation & Governance (2020) [www.researchgate.net](http://www.researchgate.net) accessed on 30<sup>th</sup> January, 2020

<sup>63</sup> Selznick P, ‘Focusing Organisational Research on Regulation’, in R. Noll (ed.), Regulatory Policy and the Social Sciences (Berkeley, CA) 1985, 363

<sup>64</sup>Balak Orbach, ‘What is regulation?’, 30 Yale Journal of Regulation online (2012) [www.orbach.org](http://www.orbach.org) accessed on 1<sup>st</sup> February, 2020

<sup>65</sup> WorkSafeBC, Safeguarding Machinery and Equipment, WorkSafeBC Store <https://www.worksafebcstore.com> accessed on 19<sup>th</sup> January, 2020

## CHAPTER TWO: LITERATURE REVIEW

This Chapter deals with literature review on international and national OSH regulation frameworks based on the study objectives.

### 2.0 Relevance of National OSH Regulation

Alli observes that among other measures ILO uses international labour standards to actively encourage OSH regulation in member countries.<sup>66</sup> He makes a case for ILO member states to adopt the said standards for better OSH outcomes at the workplace. However, the study did not make any assessment of any ILO member state's OSH regulatory framework to connect the deficiencies in the said laws with the regulatory failures in any of the said states.

MacEachen and others in their study of the literature review on occupational health legislation and regulatory enforcement concluded that the safety of the work place was dependent on clear rules being set out and communicated to all the concerned persons and enforcement of the rules.<sup>67</sup> However, the study did not consider the connection between the effectiveness of work place preventive measures with the international standards. Thus, the knowledge and enforcement of the rules alone may not yield positive outcomes where the enforced rules are deficient on international standards.

A 2017 study by Akpınar –Elci and others in the Caribbean countries posits that there is a direct link between ratification of International ILO standards and better safeguard measures at the workplace.<sup>68</sup> The study further established that countries that have not ratified the said standards have poor OSH outcomes.<sup>69</sup> Similarly, Donald J Wilson and others contend that there is a

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<sup>66</sup> Alli (n 53)

<sup>67</sup>MacEachen E and others, 'Systematic review of qualitative literature on occupational health and safety legislation and regulatory enforcement planning and implementation', *Journal of Work, Environment & Health* (2016) [www.sjweh.fi](http://www.sjweh.fi) accessed on 29<sup>th</sup> January, 2020

<sup>68</sup>Akpınar-Elci et al (n 49)

<sup>69</sup>Ibid.

correlation between the number of international labour standards ratified and the rates of OSH incidents.<sup>70</sup> According to the said scholars, a higher number of OSH conventions ratified is associated with lower OSH incidents while higher OSH incidents are associated with lower OSH labour standards ratified.<sup>71</sup>

In coming to the said conclusions, it is not shown that the said scholars evaluated any specific safeguard in the legal frameworks subject of the said studies.

A study which was conducted in 2018 by Ncube and Kanda on Southern African countries similarly came to the conclusion that there is a link between implementation of ILO standards and OSH preventive legislative frameworks.<sup>72</sup> The said study as well did not assess the implementation of any of the safeguards provided for in legal frameworks of the said countries in relation to the international standards.

Another 2018 study by Suttawet and Bamber in Thailand observes that the implementation of international labour standards in national legislation is critical to decent work.<sup>73</sup> Again this study, just like the ones reviewed above, came to the said conclusion without an evaluation of any safeguard in the OSH framework of the said country to assess the extent to which compliance with the International Labour Standards contributes to a safe working environment.

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<sup>70</sup>Donald J Wilson and others, 'The Ratification Status of ILO Conventions Related to Occupational Safety and Health and Its Relationship with Reported Occupational Fatality Rates', *Journal of Occupational Health*, (February, 2007), Research Gate, [www.researchgate.net](http://www.researchgate.net) accessed on 5<sup>th</sup> July, 2020

<sup>71</sup> Ibid

<sup>72</sup> Ncube & Kanda (n 55)

<sup>73</sup>Chockchai Suttawet, Greg J Bamber, 'Internal Labour Standards and decent work: a critical analysis of Thailand's experiences with suggestions for theory, policy, practice and research, *Asia Pacific Journal of Human Resources* (2018) [www.onlinelibrary.wiley.com](http://www.onlinelibrary.wiley.com) accessed on 17<sup>th</sup> March, 2010

## 2.1 Role of Legislation in Effective OSH Regulation

There is scholarly consensus that legislation is the pivot on which OSH operates. Alli posits that appropriate legislative framework coupled with enforcement is essential for prevention of OSH incidents.<sup>74</sup> He further adds that in the absence of law or where the law is not enforced, “the door would be wide open to all forms of abuse”.<sup>75</sup> However, he does not consider whether any abuses would arise when the safeguards provided for in a given regulatory framework are inadequate on account of being noncompliant with international OSH standards.

Charlotte Seiberhagen and others agree that that legislation is necessary to ensure that OSH for the workers is seriously taken.<sup>76</sup> However, the said scholars did not consider how the said seriousness can be encouraged. No practical measure was proposed by the said scholars as to motivate compliance with the law.

A study by Anacleto Gaspar Henda Domingos of Angola’s OSH regulatory framework for the OGI which was carried out in 2014 established that the said country had poor OSH regulatory outcomes in the said industry due to the country’s failure to ratify several key ILO Conventions.<sup>77</sup>

While the study discussed several OSH rights at the work place and the disconnection between Angola’s OSH legal framework with the International Standards, the study did not present a comprehensive assessment of any safeguard in the said framework in relation to the said standards.

The importance of OSH legislation is further underscored by Omobolanle and John who, in their 2017 study on worker knowledge of OSH legislation in Nigeria, concluded that specific OSH

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<sup>74</sup> Alli (n 53)

<sup>75</sup> Alli (n 53)

<sup>76</sup> Charlotte Seiberhagen, Sebastian Rothmann and Jacobus Pienaar, ‘Employee Health and Wellness in South Africa: The Role of Legislation and Management Standards’, SA Journal of Human Resource Management (April, 2009) [www.researchgate.net](http://www.researchgate.net) accessed on 30<sup>th</sup> January, 2020

<sup>77</sup> Anacleto Gaspar Henda Domingos, ‘A critical analysis of the Angola Occupational Health and Safety (OHS) law and the protection it offers to the employees of the oil and gas industry’, Master’s Degree Thesis, University of Cape Town (UCT) (2014)

legislation coupled with monitoring and strict enforcement are necessary for a safe work environment.<sup>78</sup> However, this study did not consider the importance of international OSH standards in contributing to a safe working environment in the said country.

In agreement with the conclusion of the scholars mentioned above, a review by Andersen and others of OSH literature from 1966-2017 to assess legislative policy as a means to improve OSH concluded that legislation and regulatory policy are essential for a safe working environment.<sup>79</sup> However, in coming to this conclusion the study did also not consider the importance of international standards in contributing to a safe working environment.

The role played by legislation, the recommended regulatory practices and industrial guidelines in the prevention of health safety and environmental disasters fuelled by impacts of fossil fuel processes has been acknowledged by G. Thiyagarajan and M. Belayneh with regard to the causes of the Macondo oil spillage, the worst oil spill in American history. In their 2018 study the said scholars pointed out that compliance with the established technical regulations safety standards in the regulatory framework is key in mitigation and reduction of accident risk.<sup>80</sup> While the said scholars rightly highlighted the importance of following the established the recommended regulatory guidelines and procedures in the prevention of the said disasters, they did not consider the relevance of international standards in national OSH regulatory frameworks.<sup>81</sup>

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<sup>78</sup> Omobolanle Adeyemo and John Smallwood, 'Impact of Occupational Health and Safety Legislation on Performance Improvement in Nigerian Construction Industry', *Procedia Engineering* (2017) [www.elsevier.com](http://www.elsevier.com) accessed on 30<sup>th</sup> January, 2020

<sup>79</sup> Andersen JH and Others, 'Systematic literature review on the effects of occupational safety and health interventions at the workplace', *Scand J Work Environ Health* 2019; 45(2) 103-113 [www.sjweh.fi](http://www.sjweh.fi) accessed on 1<sup>st</sup> February, 2020

<sup>80</sup> G. Thiyagarajan and M. Belayneh, 'Gap analysis between Macondo deep horizon drilling blowout with regulations and industrial standards & codes', *ResearchGate*, May 2018 <https://www.researchgate.net> accessed on 14<sup>th</sup> April, 2021

<sup>81</sup> Ibid



In their study of 2020 Roland Moreau and Lyn Arscott on the actions taken in and prevention of safety and environmental disasters following the Macondo incident reoccurring Among other measures that were put in place were legislative reforms to ensure the revitalisation of regulatory oversight.<sup>82</sup> Among the reforms put in place were the establishment of the Bureau of Safety and Environmental Enforcement to oversee the enforcement of new rules for implementation of safety measures.<sup>83</sup> The said scholars did not assess the said legislative measures for compliance with international standards.

Other scholars have posited that apart from poor decision making at the enterprise level that may result in safety and environmental disasters regulatory failure is also key in driving the said disasters. Rebecca M. Bratspies in her 2011 study observed that to a large extent regulatory failure contributed to the occurrence of the Macondo incident.<sup>84</sup> She holds the regulatory accountable for the hands-off regulatory approach in an OGI industry where the licensees “are more concerned with investment in extraction technology than safety containment”.<sup>85</sup> The said scholar reviewed several legislative reforms by way of environmental statutes that were enacted to mandate regulatory agencies to require development of safety technologies by developers. However, no assessment of the said measures in terms of compliance with international standards was carried out.

A study carried out in 2014 by Ambisisi Ambituuni, Engobo Emeseh and Jaime M. Amezaga on the Nigerian OGI industry focuses on the adequacy of rules and institutional arrangements in place

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<sup>82</sup> Roland Moreau and Lyn Arscott, ‘Post Macondo Focus on Safety’, Journal of Petroleum Technology. April 18, 2020 <https://jpt.spe.org> accessed on 14<sup>th</sup> April, 2021

<sup>83</sup> Ibid

<sup>84</sup> Rebecca M Bratspies, ‘A Regulatory Wakeup Call: Lessons from BP’s Deepwater Horizon Disaster’, Goldsgate Environmental Law Journal, 2011 <https://www.researchgate.net> accessed on 14<sup>th</sup> April, 2021

<sup>85</sup> Ibid

for containment of waste dumping which are cause of safety and environmental disasters in the said country.<sup>86</sup>

OSH safety and environmental disasters in Nigeria are also driven by gas flaring. According to Olusola Joshua Olujobi's study of 2020 flaring is a result of weak regulatory enforcement of anti-gas flaring laws.<sup>87</sup> Flaring in breach of the regulatory controls in place has led to the accumulation of green gas emissions with attendant risk of adverse effects to human health and the environment.<sup>88</sup> This study recommended the overhauling of the legislative framework for safety and environmental protection.<sup>89</sup> However, in making the said recommendation the scholars did not take into account the relevance of the international standards in fostering an effective regulatory framework for prevention of work safety and environmental disasters.

The literature which is relevant to Uganda's OSH framework is reviewed in the next Section.

## **2.2 Uganda's OSH Legislative Framework in Relation to International Standards**

In its 2011 study of Uganda's laws that were then in place for regulation of the nascent OGI, International Alert observed that the said laws had not been designed for the regulation of the commercial quantities of crude oil that had been discovered.<sup>90</sup> The study further analysed the salient provisions of the bills that were pending enactment for regulation of the OGI. However, the said study is silent on the provisions in the said bills relating to OSH regulation of the said industry.

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<sup>86</sup> Ambisisi Ambituuni, Engobo Emesch, 'Analysis of Safety and Environmental Regulations for Downstream Petroleum Industry Operations in Nigeria: Problems and Prospects', ResearchGate, 2014 <https://www.researchgate.net> accessed on 14<sup>th</sup> April, 2021

<sup>87</sup> Olusola Joshua Olujobi, 'Analysis of the Legal Framework Governing Gas Flaring in Nigeria's Upstream Petroleum Sector and the Need for Overhauling', Social Sciences, Volume 9 Issue No. 8 2020 <https://doi.org> accessed on 14<sup>th</sup> April, 2021

<sup>88</sup> Ibid

<sup>89</sup> Ibid (n 87)

<sup>90</sup>Alert International, 'Oil and Gas in Uganda: A Legislators' Guide, Oil Discussion (Paper, May, 2011), Alert International [www.international-alert.org](http://www.international-alert.org) accessed on 18<sup>th</sup> September, 2020

A 2018 study by Edwinah Atusingwize<sup>91</sup> and others on Uganda's OSH regulatory framework also agrees with the above scholars on the importance of legislation in OSH regulation. While the study pertinently observed that OSH incidents in developing countries are a result of poor regulatory frameworks, the specifics of the deficits in the said frameworks were not highlighted.<sup>92</sup> In particular, the study concluded that Uganda's OSH laws are "largely outdated compared to the current needs of the workplace".<sup>93</sup> However, in coming to the said conclusion the study did not assess the compliance of Uganda's OSH regulatory framework with international labour standards. France and Artwell also agree that OSH legislation plays a vital role in OSH. In their study on the strengths and limitations of OSH legislation in several sub-Saharan countries including Uganda they established that the said countries were yet to codify ILO Conventions in their laws.<sup>94</sup> However, the said scholars did not consider the particular international standards that ought to be embraced in the national OSH legislative framework of the said countries for the safeguards in the said laws to be effective.

A study carried out by the Auditor General of Uganda in 2016 on the effectiveness of OSHA enforcement during the period 2012-2015 noted that one of the priorities of DOSH was to conduct research in upstream and downstream OSH issues.<sup>95</sup> The study further noted that DOSH had carried out certification of plants and equipment used in the upstream and midstream sectors. However, the study did not assess whether the said role had been efficiently performed in light of the separate mandate entrusted to PAU with regard to OSH regulation of the said industry. The

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<sup>91</sup> Edwinah Atusingwize and Others, 'Occupational safety and health regulations and implementation challenges in Uganda', Archives of Environmental and Occupational Health 74(9): 1-8 September, 2018 [www.researchgate.net](http://www.researchgate.net) accessed on 3<sup>rd</sup> February 2020

<sup>92</sup> Atusingwize (n 91)

<sup>93</sup> Ibid

<sup>94</sup> France Ncube and Artwell Kanda, 'Safety and Health Legislation in Low and Middle-Income Countries', Safety and Health at Work, Vol 9 Issue 4, 2018 [www.sciencedirect.com](http://www.sciencedirect.com) accessed on 20<sup>th</sup> January, 2020

<sup>95</sup> Ibid

study did also not interrogate Uganda's delayed ratification of various ILO Conventions as a factor in the country's poor OSH performance.

A 2020 study by Bakiza J C on the efficacy of OSH environmental management and safety programme in the OGI made a case for a shift in the regulatory approaches to introduce prescriptive, performance based and safety case regulatory approaches.<sup>96</sup> However, the said thesis did not address the possible deficiencies in Uganda's OSH regulatory framework for OGI by reason of the country not having ratified the various ILO Conventions relevant for OSH regulation in the said industry.

### **2.3 Research Framework**

Research framework is described as a researcher's structural guide for research, data analysis and findings.<sup>97</sup> It takes the form of either conceptional framework or theoretical framework.<sup>98</sup> Some scholars posit that conceptional framework is a researcher's idea as to how various variables including theory relate in explaining the problem under study and takes the form of a model.<sup>99</sup> It is further argued that conceptual framework is appropriate in studies involving empirical data and inductive reasoning.<sup>100</sup> In this case statistical evidence is used to reach conclusions. On the other hand, it is posited that theoretical framework is anchored on theories which have been tested and validated by scholars and is appropriate in studies involving deductive reasoning.<sup>101</sup> These are

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<sup>96</sup>Bakiza John Chris, 'The Efficacy of the Regulatory System in Uganda's Health and Safety Program in the Oil and Gas Sector, A case Study of the Albertine Graben in Western Uganda', (Master of Laws, Uganda Christian University (2020)

<sup>97</sup> Charles Kivunja, 'Distinguishing between Theory, Theoretical Framework, Conceptual Framework: A systematic Review of Lessons from the Field', International Journal of Higher Education, Volume 7 No. 6; 2018 <http://ijhe.sciedupress.com> accessed on 12<sup>th</sup> April, 2021

<sup>98</sup> Ibid

<sup>99</sup> Dickson Adom and Amad Kamil Hussein, 'Theoretical and Conceptual Framework: Mandatory Ingredients of Quality Research, January 2018: International Journal of Scientific Research 7(1): 438-441 <https://www.researchgate.net> accessed on 12<sup>th</sup> April, 2018

<sup>100</sup> Sitwala Imenda, 'Is there a Conceptual Difference between Theoretical and Conceptual Frameworks? Journal of Social Sciences Vol 38, 2014 Issue 2 <https://www.tandoline.com> accessed on 12<sup>th</sup> April, 2021

<sup>101</sup> Ibid

studies which involve reasoning from a given premise to reach a logical conclusion. Some scholars have noted that conceptual framework is wider than theoretical framework.<sup>102</sup> Conceptual framework is said to be comparable to an umbrella of various concepts or variables which include relevant theories considered by the researcher in guiding the study.<sup>103</sup>

This research did not involve any statistical data or inductive reasoning to call for use of conceptual framework. The study involved analysis of data by way of legal provisions in specified legislations which formed the basis of the critical analysis, conclusions and recommendations. The doctrinal legal methodology and the comparative legal method which were adopted in the study essentially involve reasoning from a given premise to reach logical conclusions. For this reason, theoretical framework was considered to be an appropriate research framework for the study.

## **2.4 Theoretical Framework**

The study is premised on the systems model theory of accidents which explains unsafe working situations and the ultimate occurrence of accidents in terms of the way persons, machines and the environment at the workplace interact or related.<sup>104</sup> According to the said theory the probability of unsafe situations occurring is at the lowest in circumstances where there is normal interaction between persons, machines and the environment.<sup>105</sup> Each component in a contributor to the safety of the working environment such that the risk and probability of accidents happening increases where any of the said components is disrupted.<sup>106</sup> In the context of this study, the OSH Legal framework for safeguards in the OGI is a component of the system that fosters a safe working

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<sup>102</sup> Kivunja (n 97)

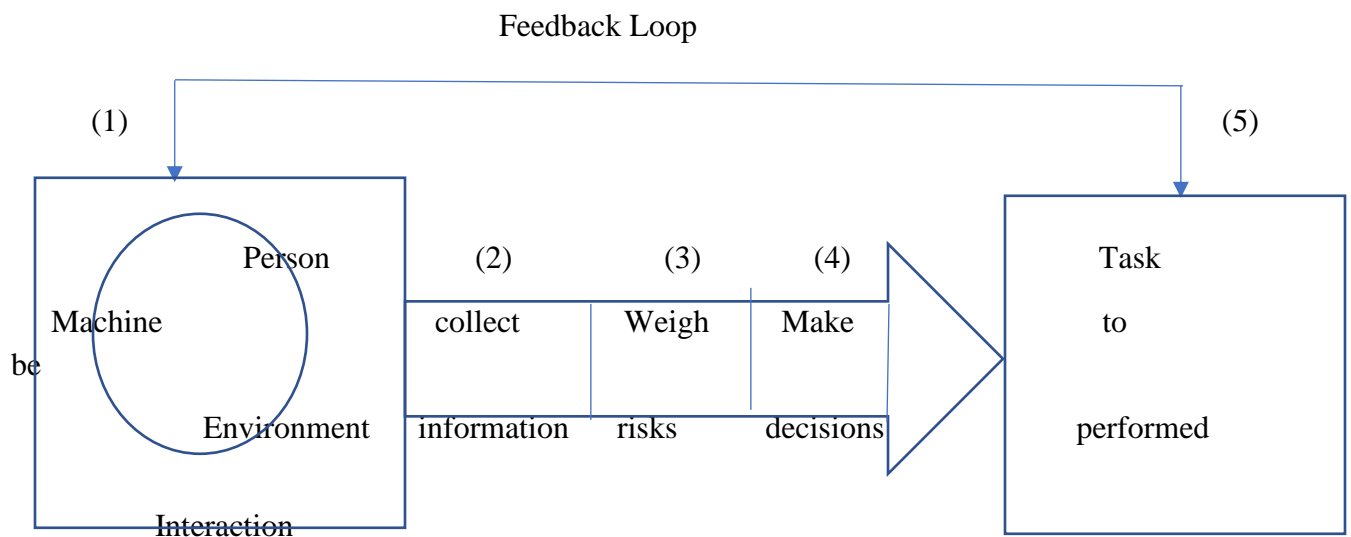
<sup>103</sup> Ibid

<sup>104</sup> Whitney Decamp & Kevin Kerskovitz, 'The Theories of Accident Causation', Research Gate (December, 2015) [www.researchgate.net](http://www.researchgate.net) accessed on 22<sup>nd</sup> January, 2020

<sup>105</sup> Ibid

<sup>106</sup> Ibid

environment in the said industry.<sup>107</sup>Hence, where the regulatory framework for OSH safeguards is inadequate or dysfunctional the safety environment in Uganda’s OGI is bound to be disrupted irrespective of whether the workforce deployed by the licensees is properly trained or supervised and the equipment used in the oil processes is in excellent condition. The risk of accidents would increase where there is a disharmony between the legal framework and the rest of the safety components at the workplace in the OGI. In that situation the probability of an unsafe working environment and accidents emerging is high. Below is a depiction of the systems theory model by some scholars.



**Figure 2: Systems Theory Model**

**Source: cited by Ndegwa P & Guyo W (2014)**

<sup>107</sup>Priscilla Ndegwa & Wario Guyo, Legal Framework as a Determinant of Implementation of Occupational Safety Programmes in Manufacturing Sector in Kenya’, Research Gate (October 2014) [www.researchgate.net](http://www.researchgate.net) accessed on 22<sup>nd</sup> January, 2020

## **2.5. Conclusion**

The literature review gives a highlight on various aspects of the study ranging from the role played by the legislative framework and international standards in fostering safety at the work place. As observed above, some of the reviewed scholarly work did not consider the need for national OSH frameworks to comply with the international standards as a factor for effective legal frameworks while other studies did not make any consideration of the relevant standards and the effectiveness of the safeguards in the said frameworks. Thus, the study attempts to fill the gaps in the said works through evaluation of the legal framework for safety health committees (SHCs), key safeguards in Uganda's OSH regulatory framework for OGI in relation to international best practices.

## CHAPTER THREE: METHODOLOGY

### 3.0 Introduction

This chapter presents the methodology, the research design, data collection methods, tools, ethical considerations, and limitations of the study. The researcher used the doctrinal and, comparative research methodologies. Each of the said methodologies was designed to obtain information on particular aspects of the research questions to enable the researcher come up with comprehensive findings.

### 3.1 Doctrinal Research Design

The doctrinal legal research methodology was found more suitable for this study because it entails critical and systematic analysis of legal propositions and making rational conclusions.<sup>108</sup> The researcher will adopt the said methodology analysing the provisions of various governing OSH regulation of safeguards in the OGI for rational conclusions on their adequacy to be reached.<sup>109</sup> The said research method is helpful in revealing the gaps in the law.<sup>110</sup>

#### 3.1.1 Characteristics of Doctrinal research methodology

Doctrinal research is premised on data from authoritative sources, namely statutes, judicial decisions, legal texts and legal commentaries.<sup>111</sup> It focuses on the nature of law and aids organised analysis of the statutory provisions.<sup>112</sup>

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<sup>108</sup>S.N. Jain, *Doctrinal and Non-Doctrinal legal Research*, in *Legal Research and Methodology*, Indian Law Institute, India, 68 (S.K. Verma & M. Afzal Wani eds., 2006)

<sup>109</sup>Richard Omerod, 'Rational inference: Deductive, inductive and probabilistic thinking', *Journal of the Operational Research Society* 61 (8)1207-1223 (August, 2020) [www.jstor.org](http://www.jstor.org) accessed on 27<sup>th</sup> January, 2020

<sup>110</sup> Vijay M Gawas, 'Doctrinal Legal research method a guiding principle in reforming the law and legal system towards research development', *International Journal of Law*, (September, 2017) [www.lawjournals.org](http://www.lawjournals.org) accessed on 5<sup>th</sup> February, 2020

<sup>111</sup>Kharel A, 'Doctrinal Research' *SSRN Electronic Journal* (January, 2018) [www.researchgate.net](http://www.researchgate.net) accessed on 26<sup>th</sup> January, 2020 pg.10

<sup>112</sup>S.R. Myneni, *Legal Research Methodology*, published by Allahabad Law Agency, Haryana, 5th Edition 2005, India, at 40



According to Kharel, the ultimate purpose of doctrinal research methodology is to achieve improvement in the law and hence, justice.<sup>113</sup> The tools of doctrinal research are history of the law, statutes, judicial decisions and case digests.<sup>114</sup>

### **3.1.2 Benefits of Doctrinal Research Methodology**

According to Khushal Vibhute and Filipos Aynalem the said method “helps in maintaining the continuity, consistency and certainty in the law”.<sup>115</sup> It has also been argued that the said method has academic attributes and that on this account it aids in fostering the building of new principles and forms a base for study on other social-legal issues.<sup>116</sup> Lastly, it has been contended that since the said research method relies on established sources, its outcomes are predictable.<sup>117</sup> The said methodology aided the researcher in attempting to establish the gaps in the OSH regulatory framework for safeguards in Uganda’s oil and gas industry. In this attempt, as already mentioned above, the researcher also used the comparative legal research methodology.

### **3.2 Comparative Legal Research Method**

According to Edward J. Eberle, comparative research methodology in this research will involve the comparison of the OSH regulatory frameworks of two selected countries with Uganda OSH regulatory framework for the OGI.”<sup>118</sup> The data will consist of particular provisions in the law. The comparison involves the assessment of the similarities and differences in the data from the two legal systems with the ultimate aim of understanding the range of similarities or differences

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<sup>113</sup> Kharel (n 111)

<sup>114</sup> Gawas (n 110)

<sup>115</sup> Khushal Vibhute & Filipos Aynalem, Legal Research Teaching Methods, *Teaching Material*, justice and legal system research institute, Ethiopia 70 (2009) pg.71

<sup>116</sup> Ashish Kumar Singhal & Ikramuddin Malik, Doctrinal and social-legal methods of Research: Merits and Demerits, 2(7) Educational Research Journal 253 (2010) <https://www.resjournals.com> accessed on 10<sup>th</sup> January, 2020

<sup>117</sup> Ibid

<sup>118</sup> Edward J Eberle, ‘The Methodology of Comparative Law’, Roger Williams University Law Review, Volume 16 (2011) [www.semanticscholar.org](http://www.semanticscholar.org) accessed on 3<sup>rd</sup> February, 2020

in the said data.<sup>119</sup> The ultimate aim of the comparison is to help the researcher to establish whether any divergence or similarities in the said legal provisions reveal any gaps in Uganda's OSH regulatory framework for the OGI<sup>120</sup>

For the purpose of the study a comparison of the provisions for safeguards in Uganda's OSH legal framework for the OGI was compared with the provisions for the said safeguards in two selected countries, namely, Norway and South Africa with a view to establish whether the said comparison revealed any gap in Uganda's legislative framework.<sup>121</sup>

The said countries have ratified Convention 155 which provides for a framework for cooperation between the employers among others through safety committees to foster a safe working environment. Norway has produced oil since the 1970's.<sup>122</sup> South Africa is also an oil producing country, although on a small scale.<sup>123</sup> Both countries have provided for safety committees in their legal frameworks. The study will establish whether there are any best practices for Uganda to learn from the regulatory frameworks for safety committees in the said countries.

### **3.3 Data Collection Methods**

The researcher will use secondary sources of data collection. This will entail reviewing legislation regulating OSH in Uganda's OGI, ILO Conventions and protocols, law journals and case law in other jurisdictions.

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<sup>119</sup> Edward, (n 118)

<sup>120</sup> Ibid

<sup>121</sup> Ibid

<sup>122</sup> Mikael Hook, Kjell Alklett, 'A decline rate study of Norwegian Oil Production', Research Gate (2008) [www.researchgate.net](http://www.researchgate.net) accessed on 15<sup>th</sup> June, 2020

<sup>123</sup> Emmanuel Graham, Jesse Salah Ovadia, 'Oil exploration and production in Sub-Saharan Africa, 1990-present: Trends and Developments', The Extractive Industries <https://doi.org/10.1016/j.exis.2019.02.001> accessed on 15<sup>th</sup> June, 2020

### **3.4 Data Collection Tools**

To conduct a doctrinal research, the researcher systematically based on the wide range of data deposited in the library in the form acts of parliament, regulations, ILO conventions, case law which are relevant to OSH regulatory framework.

### **3.5 Ethical considerations**

The objective of ethics in this research was to ensure that all the literature to be reviewed will be presented with proper reference to authors of the literature.

### **3.6 Limitations of the study**

There was limited availability of relevant published work on the research problem. Access to reputable journals online was also limited. Access to the said journals was subject subscription. The researcher mitigated this challenge by accessing relevant journals through a link provided by the University Library. The researcher also subscribed to some reputable online journals.

### **3.7 Conclusion**

The doctrinal method was used in assessing the provisions of the various statutes and regulations providing for OSH safeguards in the oil and gas processes for findings to be made on the extent of the adequacy of the said safeguards. On the other hand, the comparative legal research methodology aided the researcher to establish whether the comparison of the legal provisions in respect of safeguards in Uganda' OSH legislative framework for the OGI with the provisions for the same safeguards in the frameworks of Norway and South Africa countries revealed any gaps in the regulatory framework for safety health committees that Uganda needs to cover. However, the researcher took caution from Otto Kahn-Freund who observes that legal rules are a product of

a particular historical and social development context and may not necessarily succeed in being transferred to another jurisdiction.<sup>124</sup>

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<sup>124</sup> Otto Kahn-Freund, 'On Uses and Misuses of Comparative Law', (1974) 37 MLR 1

## **CHAPTER FOUR: INTERNATIONAL LEGAL FRAMEWORK FOR HEALTH AND SAFETY SAFEGUARDS**

### **4.0 Introduction**

This chapter presents an overview of the international regulatory framework for OSH safeguards for prevention of occupational injuries, diseases and fatalities in the OGI. The international legal framework for safeguards in the oil and gas industry is provided for in various Conventions issued by ILO. Several ILO Conventions are key to a safe working environment in Uganda's OGI. They include the following-

- I. The Labour Inspection Convention, 1947 (No. 81);
- II. The Radiation Convention, 1960 (No. 115);
- III. The Occupational Cancer Convention, 1974 (No. 139);
- IV. The Occupational Safety and Health Convention, 1981 (155);
- V. The Occupational Health Services Convention 1985 (No. 161);
- VI. The Chemicals Convention 1990 (No. 170);
- VII. Prevention of Major Industrial Accidents Convention, 1993 (No. 174);
- VIII. Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187);

### **4.1 International Labour Standards and OSH regulation**

Since its establishment in 1919 ILO provided for a legal framework for regulation of workplace safety in form of Conventions. These instruments are ideally intended to be adopted by all ILO member states and implemented in their national legislations for optimum safety measures in the

working environment.<sup>125</sup> However, ILO Member States are not obliged to adopt and domesticate the said instruments. Several Conventions that are key to mitigation of risks at the workplace have not been ratified by the Member States. This raises the question as to the effectiveness of the national legal framework for OSH regulation where the ILO Member States have not ratified and domesticated the ILO standards designed for promotion of workplace safety. An overview of the Conventions mentioned above is presented hereunder.

#### **4.1.1 The Labour Inspection Convention, 1947 (No. 81)**

This Convention requires ILO member states ratifying this Convention to maintain a system of inspection of the workplace.<sup>126</sup> The purpose of the inspection is to ensure the employers comply with the national laws on the conditions of work including the measures to protect workers at the work place.<sup>127</sup> For the purpose of ensuring continuous improvement in the national OSH laws, the inspectors are mandated to identify gaps in OSH laws and accordingly notify the authority in charge of inspection.<sup>128</sup>

For the purpose of ensuring proper coordination in the inspections, the said Convention requires that to the greatest extent possible, the labour inspection should be centrally managed and controlled.<sup>129</sup> In this regard, the inspectorate authority is required to co-ordinate other government agencies rendering the same service.<sup>130</sup> The spirit here is that the inspection authority should be overall be accountable for supervision of workplace safety.

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<sup>125</sup> Article 19(5), ILO Constitution

<sup>126</sup> ILO, Labour Inspection Convention, 1947, Article 1

<sup>127</sup> Ibid, Article 2

<sup>128</sup> Ibid, Article 3

<sup>129</sup> Ibid, Article 4

<sup>130</sup> Ibid, Article 5

To ensure that the said inspections are effective, ILO member states are obliged to ensure that competent inspection personnel with qualifications in various specialised fields such as engineering, chemistry and medicine are engaged as inspectors. Furthermore, it is not sufficient to establish an inspectorate which is poorly staffed. It is an obligation that the inspectorate be staffed with a sufficient number of inspectors to discharge the inspectorate duty.<sup>131</sup>

The said Convention further requires that the inspectors be mandated to require the employers to carry out immediate remedial actions or the inspectors themselves to take such immediate measures to avert imminent danger to the workers.<sup>132</sup>

In furtherance of the objective to protect workers, the Convention imposes an obligation for ILO member states to ensure that national OSH law provides for adequate sanctions for any breaches which should be robustly enforced by the inspectors.<sup>133</sup>

#### **4.1.2 The Radiation Protection Convention, 1960 (No. 115)**

ILO member states ratifying Convention No. 115 are obliged to enact legislation for implementation of the protection measures provided for by the Convention in national laws.<sup>134</sup> The Convention applies to all activities where the workers are exposed to a risk of being exposed to ionising radiation.<sup>135</sup> To ensure oversight in the implementation of the Convention, ratifying states are obliged to notify ILO's Director-General the measures taken in implementing the Convention.<sup>136</sup> Besides the protective measures to ensure that workers are not exposed to radiation,

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<sup>131</sup> ILO, Labour Inspection Convention, 1947, Article 10)

<sup>132</sup> Ibid, Article 13

<sup>133</sup> Ibid, Article 18

<sup>134</sup> Radiation Protection Convention, Article 1

<sup>135</sup> Ibid, Article 2

<sup>136</sup> Ibid, Article 3(c)

the workers have a right to be informed by way of notices of the presence of any unsafe area in the workplace.<sup>137</sup>

#### **4.1.3 The Occupational Cancer Convention, 1974 (No. 139)**

ILO member states ratifying this Convention are obliged to take measures to mitigate the risk of cancer which include the reduction of the time a worker is likely to be exposed to cancer causing agents.<sup>138</sup> It also creates a right for the workers to be informed of the cancer risks at the workplace and the measures taken to mitigate the risks.<sup>139</sup>

#### **4.1.4 Promotional Health Services Convention, 1985 (No. 161)**

This Convention applies to all economic undertakings of whatever description.<sup>140</sup> It is a requirement under the said Convention that national OSH policies provide for health advisory services to the employers and employees with regard to the need of ensuring physical and mental health of the persons at the work place.<sup>141</sup> Further, it is a requirement that in consultation with the representatives of the employers and the workers the government of a ratifying state establish a national policy on OSH services that should be regularly reviewed.<sup>142</sup> The provision for health services should not only be sufficient but also designed to address the risks presented by particular undertakings.<sup>143</sup> It is also a requirement that the said states provide for OSH services in their national OSH legal frameworks and collective agreements.<sup>144</sup> The Convention further provides for rules under which OSH health services should be rendered. For instance, it requires that health

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<sup>137</sup> Radiation Protection Convention, Article 9

<sup>138</sup> Ibid, Article 2

<sup>139</sup> Ibid, Article 4

<sup>140</sup> Promotional Health Services Convention, 1985 (No. 161), Article 3 <[www.ilo.org](http://www.ilo.org)> accessed on 5<sup>th</sup> July, 2020

<sup>141</sup> Ibid, Article 3

<sup>142</sup> Ibid, Article 2

<sup>143</sup> Ibid, Article 3

<sup>144</sup> Ibid, Article 6



service providers be professionally independent of the employers and workers.<sup>145</sup> The preventive culture is also promoted by creation of a right for the workers to be informed of the health hazards at the work place.<sup>146</sup>

#### **4.1.5 Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)**

Convention No. 187 is aimed at encouraging the promotion of a culture for prevention of OSH incidents whereby the government, the enterprise managers and the workers work in concert with each other towards achieving the said goal.<sup>147</sup> The Convention requires the allocation of OSH duties, rights and responsibilities in national laws as a measure towards achieving a safe working environment.<sup>148</sup> The states adopting the Convention are required to ensure that their national laws are in consonance with the principles in the Convention and to continuously improve OSH preventive measures provided for in national laws.<sup>149</sup> To ensure that all the stakeholders in OSH are well informed of the OSH preventive measures, it is an obligation that governments of the ratifying states widely publish the said measures.<sup>150</sup>

#### **4.1.6 The Chemicals Convention, 1990 (No.170)**

The prevalent usage of hazardous chemicals at the work place is regulated by the Chemicals Convention, 1990 which creates a right for the workers to be informed of the risks associated with hazardous chemicals and the preventive measures to be observed.<sup>151</sup>

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<sup>145</sup> Promotional Health Services Convention, 1985 (No. 161), Article 10)

<sup>146</sup> Ibid, Article 13

<sup>147</sup> Promotional Framework for Occupational Safety and Health Convention 2006, Article 1

<sup>148</sup> Ibid

<sup>149</sup> Ibid, Article 2

<sup>150</sup> Ibid, Article 2

<sup>151</sup> Ibid

#### **4.1.7 The Prevention of Major Industrial Accidents Convention, 1993 (No. 174)**

The risks involved in air pollution, noise and vibrations are regulated by Convention No. 148.<sup>152</sup>

The states ratifying this Convention are obliged to make provision in the legal frameworks for measures to militate against hazards related to pollution, noise and vibration at the work place.<sup>153</sup>

The noise limits of these occurrences have to be provided for in the law.<sup>154</sup>

On the other hand, the prevalent usage of hazardous chemicals at the work place is regulated by Convention 170 of 1990.<sup>155</sup> This Convention creates a right for the workers to be informed of the risks associated with the hazardous chemicals at the work place and the preventive measures to be observed.<sup>156</sup> The said Convention which has been legally effective for slightly over 21 years has to date only attracted ratifications by 22 ILO member states.<sup>157</sup>

The risk of major accidents in the OGI is regulated by Convention No. 174.<sup>158</sup> The states adopting this Convention in their national legal frameworks are required to regularly review its national OSH policy with a view to mitigate the risks on major industrial accidents that may affect the workers and the general public.<sup>159</sup> Critically important, the employers are obliged to put in place documented measures to control the risk of major accidents.<sup>160</sup>

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<sup>152</sup> ILO, The Working Environment (Air Pollution, Noise and Vibration Convention, 1974

<sup>153</sup> Ibid, Article 4

<sup>154</sup> Ibid, Article 8

<sup>155</sup> ILO, Chemicals Convention 1990, Article 1 [www.ilo.org](http://www.ilo.org) accessed on 23<sup>rd</sup> July, 2020

<sup>156</sup> Ibid, Article 7

<sup>157</sup> ILO, 'Ratifications of C170-Chemicals Convention, 1990 (No. 170)', ILO [www.ilo.org](http://www.ilo.org) accessed on 20<sup>th</sup> July, 2020

<sup>158</sup> ILO, Prevention of Major Industrial Accidents Convention, 1993

<sup>159</sup> Ibid, Article 4

<sup>160</sup> Ibid, Article 9

#### 4.1.8 The Occupational Safety and Health Convention, 1981 (No. 155)

The Occupational Safety and Health Convention, No. 155 is credited for setting out far reaching measures in ensuring a safe working environment.<sup>161</sup>

The Convention calls for a consultative mechanism between governments, the employers' and workers' representatives in the formulation and execution of a national OSH policy.<sup>162</sup> The aim of the said policy is to mitigate OSH incidents so as to minimise "as far as reasonably practical" hazards at the work place.<sup>163</sup>

It is a requirement under the said Convention that the national policy takes into account matters such as the work premises, tools, machinery, chemical and biological agents and processes.<sup>164</sup>

To ensure that the said policy remains current with regard to OSH protection strategies, the states ratifying Convention 155 are further required to review the said policy on regular intervals.<sup>165</sup>

For the purpose of ensuring compliance with OSH safeguards at the workplace ILO member states are required to put in place a robust inspection mechanism and deterrent penalties for any breaches of the OSH measures.<sup>166</sup> The said states are also obliged to guide the employers and workers in discharging their respective OSH obligations at the work place.<sup>167</sup> Further, to encourage workers to mind their safety, it is a requirement that workers taking themselves from a hazardous work environment do not suffer any reprisal.<sup>168</sup>

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<sup>161</sup> Edoardo Ales, 'ILO Convention 155 Occupational Safety and Health Convention, 1981 (No. 155): Article-by-Article Commentary', Research Gate (January, 2018) [www.researchgate.net](http://www.researchgate.net) accessed on 5<sup>th</sup> July, 2020

<sup>162</sup> ILO Convention 155 Occupational Safety and Health Convention, 1981 (No. 155), Article 4(1)

<sup>163</sup> Ibid, Article 4(a)

<sup>164</sup> Ibid, Article 5

<sup>165</sup> Edoardo, (n 161)

<sup>166</sup> ILO Convention 155 Occupational Safety and Health Convention, 1981 (No. 155), Article 9(2)

<sup>167</sup> Ibid, Article 10

<sup>168</sup> Ibid, Article 13

To ensure workers' participation in their safety, Convention 155 creates SFCs as a tool to involve workers in their own safety in the course of discharging their duties.<sup>169</sup>

ILO considers Convention 155, Convention 161 and Convention 187 to bear fundamental principles for workplace safety.<sup>170</sup> However, the study considers Convention No. 155 the most significant in as far as it provides for the workplace safety as a joint responsibility between the employers and workers. It provides for a legal framework for co-operation between the workplace managers, the workers and the government in establishing institutional safeguards in form of Safety and Health Committees (SHCs) at the workplace for prevention of injuries and diseases. The study considers SHCs pivotal to a safe working environment in the OGI.

#### **4.2 Assessment of Uganda's status on International Standards**

Save for Convention No. 81 which was ratified in 1963, Uganda is yet to ratify the rest of the Conventions for regulation of workplace safety.<sup>171</sup> Ratification of conventions is a constitutional requirement.<sup>172</sup> Until the process of ratification is completed Uganda has no legal obligation of implementing such a Convention.<sup>173</sup>

In the absence of ratification of most of the Conventions in respect of workplace safety Uganda has no any international legal obligation to implement the unratified Conventions in its legal framework. It can thus be argued that the safeguards provided for in Uganda's OSH legal framework are delinked from the international standards.

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<sup>169</sup>ILO Convention 155 Occupational Safety and Health Convention, 1981 (No. 155), Article 19

<sup>170</sup>ILO, Convention 155 and World Day Safety and Health at Work 2013, International Labour Organisation (1996-2020), [www.ilo.org](http://www.ilo.org) accessed on 16<sup>th</sup> June, 2020

<sup>171</sup>ILO, 'Ratifications of ILO Conventions: Ratifications for Uganda', International Labour Organisation, [www.ilo.org](http://www.ilo.org) accessed on 5<sup>th</sup> July, 2020

<sup>172</sup>Constitution of Uganda, 1995, Article 123(2)

<sup>173</sup>S. 4, Ratification of Treaties Act

In particular, as a result of failure to ratify Convention 155 Uganda is not obliged to implement OSH preventive safety measures provided for in the said Convention. Had Uganda ratified Convention 155 it would be obliged to have a national policy on occupational health safety providing for periodic review of preventive measures at the workplace. It can thus be argued that the absence of a national OSH policy in Uganda is linked to the failure to ratify Convention 155. In the absence of the said national policy the only fallback position for improvement in the safety of the work environment appears to be the law reform process under the Law Reform Commission Act.<sup>174</sup> The Law Reform Commission is mandated to review the laws of Uganda and make recommendations for their improvement.<sup>175</sup>

Given the high number of laws on Uganda's statute books, the law reform process cannot be an efficient mechanism for regular review and improvement of the regulatory framework for safety of the work environment. The delayed amendments for improvement of the low penalties provided for in OSHA can be explained by the fact that the Uganda Law Reform Commission has a vast agenda to deal with. Uganda Law Reform Commission has no mandate to give priority to OSH matters. In this regard the Auditor General of Uganda's recommendation of 2016 for the amendment of OSHA to provide for deterrent penalties is yet to be attended to and implemented.<sup>176</sup>

It can thus be argued that the law reform process under the Uganda Law Commission cannot be a substitute for the national OSH policy under Convention 155 for improvement of safety in the work environment. The ratification of Convention 155 would oblige Uganda specifically to pay

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<sup>174</sup>Act No. 25 Laws of Uganda

<sup>175</sup> Ibid, S.10

<sup>176</sup> Office of the Auditor General, 'Enforcement of Occupational Safety and Health Activities at Workplaces by the Department of Occupational Safety and Health Under the Ministry of Gender, Labour and Social Development (December 2016) [www.oag.ug](http://www.oag.ug) accessed on 14<sup>th</sup> January, 2020

attention to regular reviews of the laws relating to the safety of the working environment and implementing the recommendations through amendments to the relevant OSH laws.

### **4.3 Conclusion**

ILO has played its role in issuing OSH standards for regulation of workplace safety. However, the implementation of the principles in the said standards in national OSH legal frameworks of the ILO member states is subject to the said states ratifying and domesticating the said standards. As pointed out above Uganda is yet to ratify most of the standards for regulation of workplace safety. In the absence of the said ratification Uganda has no legal obligation for accountability for the level of workplace safety provided in OSH legal framework.

However, the ratification of international labour standards for regulation workplace safety is not a guarantee for their enforcement.<sup>177</sup> Thus, it is possible for national laws to adopt the principles in the said labour standards but remain ineffectively implemented.

Lessons need to be taken from countries which have ratified and implemented international standards for workplace safety in their OSH legal frameworks and in particular, the standard relating to SHCs. The international best practices of the legal framework for SHCs are discussed in the next Chapter.

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<sup>177</sup> Jane Lethbridge, 'Occupational health regulations and health workers: protection or vulnerability', Public Services International Research Unit (2008) [www.semanticscholar.org](http://www.semanticscholar.org) accessed on 19<sup>th</sup> July, 2020

## CHAPTER FIVE: BEST INTERNATIONAL PRACTICES ON HEALTH AND SAFETY SAFEGUARDS

### 5.0 Introduction

OSH safeguards are of the major importance for promotion of safety at the workplace. The law provides for many safeguards including inspection systems, penalties for OSH breaches, SHCs and others. The study mainly focused on SHCs. Some scholars have weighed the contribution of the SHCs to the safety culture at the workplace in terms of the commitment by management, processes and expert involvement in SHCs activities.<sup>178</sup>In other words, that the success of the said safeguards towards a safe environment depends on the readiness of the management of the workplaces to commit to ensure the operations of the said safeguards. Hence, the success of SHCs is viewed from a point of self-regulation.<sup>179</sup>However, it is contended that the effectiveness of SHCs can only be attained in the context of a legal framework that enables their functionality.

The study identified Norway and South Africa as oil producing countries which have ratified Convention 155.<sup>180</sup>The parties to Convention 155 are obliged inter alia to provide for the workers' participation in safety measures at the workplace through SHCs.<sup>181</sup> OSH legal frameworks for countries which have ratified the said Convention may provide best practices for functional SHCs for comparative purposes with Uganda' legal framework of the same safeguards. The legal frameworks for SHCs in Norway and South Africa are considered in the next sections.

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<sup>178</sup>Kent J. Nielsen, 'Improving safety culture through the health and safety organization: A case study', *Journal of Safety Research* Vol. 48, February, 2014 p7-14 [www.sciencedirect.com](http://www.sciencedirect.com) accessed on 11<sup>th</sup> January, 2021

<sup>179</sup>Grace K Bryce and Pan Manga, 'The Effectiveness of Health and Safety Committees, *Industrial Relations*, Vol. 4, No. 2 (1985) pp 257-283 [www.jstor.org](http://www.jstor.org) accessed on 11<sup>th</sup> January, 2021

<sup>180</sup>ILO, 'Ratifications by Conventions', International Labour Organisation [www.ilo.org](http://www.ilo.org) accessed on 11<sup>th</sup> January, 2021

<sup>181</sup> Ibid

## 5.1 Legal framework for SHCs in Norway

The legislative framework for workplace safety in Norway is provided for under the Working Environment Act.<sup>182</sup> The said law requires an employer to ensure that the regulations for safe working environment are upheld.<sup>183</sup> One of the tools provided for in the law for a safe working environment are working environment committees (WECs).

It is a requirement that undertakings with not less than 50 workers should have a WEC on which the employer, the workers and the agency responsible for OSH oversight are represented.<sup>184</sup> An undertaking with at least twenty workers may also establish a WEC upon the request by the workers at the workplace.<sup>185</sup>

The WEC membership is also provided for. The membership consists of an equal number of representatives of employers and the employees and the chairing of the committee meetings has to alternate between representatives of the employer and employees.<sup>186</sup>

The law also provides for the decision-making process in the committees. It is a requirement that decisions be made through majority votes and that in the event of equality of votes the chair has a casting vote.<sup>187</sup>

Furthermore, the composition of the committees, election of representatives and their term of office are provided for in the regulations which will be considered later on below.<sup>188</sup>

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<sup>182</sup>Act No. 62 of 2005

<sup>183</sup>Ibid, Chapter 2

<sup>184</sup>Act 62 of 2005, S.7-1(1),

<sup>185</sup>Ibid

<sup>186</sup>Act 62 of 2005, S.7-1(4)

<sup>187</sup>Ibid

<sup>188</sup>Act 62 of 2005, S.7-1(5)



### **5.1.1 Safety Committee Duties**

The WECs are mandated to participate in the laying strategies for safety at the workplace and among other obligations make decisions on questions of safety, training and information disseminated at the workplace.<sup>189</sup> The committees are also mandated to consider inspection reports and ascertain the cause of the OSH incidents with a view to ensure that the employer takes measures against re-occurrence of the incidents.<sup>190</sup> The committees are empowered to access official inspection and police investigation reports and may in their own right cause the appointment of specialists or commissions of inquiry to investigate OSH incidents.<sup>191</sup> Furthermore, a safety representative on the committee is mandated to stop hazardous work and once work is so stopped it can only be resumed at the instance of the regulatory agency responsible for labour inspection.<sup>192</sup> Broadly, the regulations issued under the said law vest in the safety committee the responsibility of ensuring the implementation safety measures at the workplace through activities such as inspections and enlisting the involvement of the workers in planning for their own safety.<sup>193</sup>

### **5.1.2 Election of Members of the Working Environment Committees**

The Regulations issued under the Working Environment Act provide for the manner in which members of the WECs are appointed. The employer is mandated to appoint its own representative on the WEC and the management of big enterprises is also entitled to have a representative with

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<sup>189</sup>Act 62 of 2005, S.7-2

<sup>190</sup>Ibid, S.7-2(4)

<sup>191</sup> Ibid

<sup>192</sup>S.6-3(1), Working Environment Act, 2005 <https://www.arbeidstilsynet.no> accessed on 11<sup>th</sup> January, 2021

<sup>193</sup>S.2-3, Regulations concerning Organization, Management and Employee Participation, <https://arbeidstilsynet.no> accessed on 11<sup>th</sup> January, 2021

voting rights.<sup>194</sup> For safety oversight the employer is represented on the committee by a senior safety representative with voting rights.<sup>195</sup>

The representatives of the workers on the committee are elected by the workers through a majority vote by secret ballot.<sup>196</sup> Save for the employee representing the employer at the workplace, the rest of the workers are entitled to participate and vote in the elections.<sup>197</sup> It is a requirement that a representative of the government agency in charge of OSH at all times be a member of the committee.<sup>198</sup> The members of the WECs are legally required to have deputies. The employer is mandated to elect its deputy representative while the employees' representatives are elected in the same way as the employees' representatives.<sup>199</sup>

The members of the WEC can only be elected to serve for a term of two years and only replaced by the deputy when the member leaves the undertaking.<sup>200</sup>

### **5.1.3 Processes of Working Environment Committees**

The WEC is mandated to hold meetings as it deems necessary at the request of two members provided that at least four meetings are held in year.<sup>201</sup> The decisions are supposed to be reached by agreement but where this is not possible the decisions are taken by majority votes.<sup>202</sup> It is also of significance that the safety committees are required to keep minutes of their meetings with the majority and minority opinions put on record.<sup>203</sup> The said minutes can be useful pointers to the inspectors on the state of safety at the workplace at a given moment.

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<sup>194</sup>Regulations concerning Organisation, Management and Employee Participation, Section 3-7

<sup>195</sup> Ibid

<sup>196</sup> Ibid

<sup>197</sup>Regulations concerning Organisation, Management and Employee Participation, Section 3-8

<sup>198</sup> Ibid

<sup>199</sup> Ibid, Sections 3-11

<sup>200</sup> Ibid, Section 3-15

<sup>201</sup>Regulations concerning Organisation, Management and Employee Participation, Section 3-16

<sup>202</sup> Ibid

<sup>203</sup> Ibid

#### **5.1.4 Training of members of the Working Environment Committees**

It is a requirement that members of the WECs be given training in the working environment for them to properly perform their role. The training not only covers the responsibilities to be performed but also knowledge on continuous workplace safety, risk assessment, identification of factors that may promote or curtail a good working environment and the physical factors at the workplace for prevention of OSH incidents.<sup>204</sup>

Where the work processes involve chemical substances or biological agents the training has to extend to these fields.<sup>205</sup> Furthermore, where the working environment is beset with complex risks, the safety representatives should be given special training in those risks.<sup>206</sup> Lastly, where the inspection agency deems that the members of the safety committee require more training than that conferred by the employers, the said agency is mandated to instruct the employer to provide such training.<sup>207</sup> The OSH legal framework in Norway is said to foster mutual trust and respect among the players in the working environment.<sup>208</sup>

The next question to consider is whether the legal framework for safety committees in South Africa offers any best practice. This question is considered in the following Section.

#### **5.2 Legal framework of Health and Safety Committees in South Africa**

Health and Safety Committees (HSCs) in South Africa are established at workplaces by virtue of the Occupational Health and Safety Act.<sup>209</sup> The said committees are required to be established as part of the employer's general duty to maintain safety at the work place.<sup>210</sup> The employer's duty

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<sup>204</sup>Regulations concerning Organisation, Management and Employee Participation, Section 3-18

<sup>205</sup>Ibid

<sup>206</sup>Ibid

<sup>207</sup>Regulations concerning Organisation, Management and Employee Participation, Section 3-21

<sup>208</sup>Norwegian Ministry of Labour and Social Affairs, Health Safety in the Petroleum Industry-Meld. St. 12 (2017-2018) Report to Storting (White Paper) [www.regjeringen.no](http://www.regjeringen.no) accessed on 11<sup>th</sup> January, 2021

<sup>209</sup>Act 85 of 1993, S. 19

<sup>210</sup>Ibid

is to ensure to the extent that is practical a safe working environment devoid of health risks to the workers.<sup>211</sup>

The employer does not guarantee safety at the work place but only takes practical measures to ensure safety at the workplace.<sup>212</sup> In this regard, for every one hundred employees an employer is required to designate a safety representative in writing for a specified period.<sup>213</sup> The safety representative is responsible for reviewing the effectiveness of the safety measures at the workplace and ensure that potential hazards are identified.<sup>214</sup>

An employer who has designated two or more safety representatives is obliged to establish to one or more health safety committee and such employer is obliged to consult with the said committee at every meeting of the committee with a view of initiating, putting in place, actively encourage and maintain safety measures at the work place.<sup>215</sup>

The mandate of the committee is to make safety recommendations to the employer and where the recommendations made do not resolve the matter under consideration, the committee is empowered to make the same recommendation to the inspector.<sup>216</sup> The committee is empowered to discuss OSH incidents at the workplace and make written reports to the health inspector and maintain a record of recommendations made to the employer and the inspector.<sup>217</sup> It is the employer's obligation to ensure that the committee performs its duties.<sup>218</sup>

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<sup>211</sup> Ibid, S. 8

<sup>212</sup> Itumeleng Clarence Tshoose, 'Employer's Duty to Promote A Safe Working Environment: A South African Perspective', Journal of International Law and Technology Vol. 6 Issue 3(2011) Research Gate [www.researchgate.net](http://www.researchgate.net) accessed on 12<sup>th</sup> January, 2021

<sup>213</sup> Occupational Health and Safety Act 85 of 1993, S.17(1)

<sup>214</sup> Ibid, S. 18

<sup>215</sup> Ibid, S. 19(2)

<sup>216</sup> Ibid, S. 20(1)(a)

<sup>217</sup> Ibid, S. 20(1)(a)

<sup>218</sup> Ibid, S. 20(4)

### **5.2.1 Composition of the Health and Safety Committees**

The employer has the power to determine the number of the members of the HSCs. However, the designated health representatives must be part of members of the committee and the number of persons nominated by the employer on the committee should not exceed the number of health representatives.<sup>219</sup>

### **5.2.2 Meetings of the Health and Safety Committees**

The law is explicit on the committee meetings. HSCs are mandated to hold meetings as often as necessary provided that they meet at least once every three months at a place and time determined by the committee.<sup>220</sup> The labour inspectors have a role to play in ensuring that HSC perform their functions. Where need arises, an inspector may by notice in writing issue instructions to the committee to hold a meeting at such place and time as may be determined by him.<sup>221</sup>

The employees at a work place are also empowered to initiate a call for committee meetings. This right is vested in at least 10% of the of the employees who are empowered to petition the inspector to call a committee meeting.<sup>222</sup> Upon receipt of the said request the inspector may direct the committee in writing to hold the meeting at such place and date as determined by the inspector.

### **5.2.3 Procedures of the Health and Safety Committees**

There are no prescribed procedures for conducting committee meetings. The law allows the SHCs some flexibility on the manner in which the meetings are to be conducted. The manner in which the meetings are to be conducted is a matter to be determined by the committee.<sup>223</sup> To enable the committee fulfil its mandate, it is empowered to appoint one or more persons with expert

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<sup>219</sup> Occupational Health and Safety Act 85 of 1993, S. 20(4)

<sup>220</sup> Ibid, S. 19(4)

<sup>221</sup> Ibid

<sup>222</sup> Ibid

<sup>223</sup> Occupational Health and Safety Act 85 of 1993, S. 19(5)

knowledge on health and safety matters to advise the committee.<sup>224</sup> The persons so appointed are not entitled to participate in voting on committee resolutions.<sup>225</sup>

To ensure that the committees are at all times fully properly constituted, where an inspector holds the view that the number of the members of the committee is less than adequate, the inspector may in writing direct the employer to appoint other members of the committee as the inspector may determine.<sup>226</sup>

### **5.3 Conclusion**

This chapter discussed safety committees as OSH safeguards promoting safety at the workplace. The involvement of workers in overseeing their own safety is acknowledged as a complementary effort in securing a safe working environment.<sup>227</sup> The employees are in position to make a positive contribution on their safety because they are acknowledged as the “true experts” in the workplace environment.<sup>228</sup> It is through functional SHCs that the employers are enabled to tap into the said expertise. SHCs help the employees to identify potential hazards, and to have less fear of reprisal for doing so. The said organs offer a platform for employee involvement in workplace safety and health issues. They offer the workers a voice to air out their concerns on health and safety issues at the workplace.

SHCs cannot effectively perform their designed role when the regulatory framework in place does not adequately support their activities. It can thus be argued that inadequate provisions in regulatory framework for OSH safeguards is a recipe for an unsafe working environment.

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<sup>224</sup> Ibid, 19(6)

<sup>225</sup> Ibid

<sup>226</sup> Occupational Health and Safety Act 85 of 1993, S.7

<sup>227</sup> Ibid

<sup>228</sup> Ibid

The chapter analysed the legal frameworks of Norway and South Africa which countries ratified Convention 155 and have respectively put in place robust regulatory frameworks for functional safety committees. In Norway the said committees are named WECs while in South Africa they are named HSCs.

There is a lot to learn from the regulatory set up of the safety committees in the said countries. The law is elaborate on the establishment, mandate and processes of the safety committees to facilitate their functionality. Effective safety committees have been acknowledged as effective tools for reducing workplace incidents.<sup>229</sup> That role cannot be achieved unless the legal framework in place enables the said safety tools to function.

Uganda is progressing towards oil production, an activity which presents serious workplace safety risks and unless OSH preventive measures are properly provided for in the law there is a likelihood of having an unsafe working environment in the said industry.

In the next Chapter the regulatory framework for SHCs in Uganda is discussed in comparison with the regulatory frameworks of Norway and South Africa with a view to ascertain whether the legal framework for SHCs in Uganda supports their functionality.

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<sup>229</sup>Gregory R Watchman, 'Safe and Sound, The Concept for Safety and Health Committees under OSHA and NLRA', *Cornwell Journal of Law and Public Policy*, Vol. 4 Issue No. 1 (Fall 1994) <http://scholarship.law.cornwell.edu> accessed on 20<sup>th</sup> November, 2020

## **CHAPTER SIX: UGANDA'S OIL AND GAS REGULATORY FRAMEWORK ON HEALTH AND SAFETY SAFEGAURDS.**

### **6.0 Introduction**

With the pending oil production Uganda has made some preparation to ensure that the OGI is ready for the challenges that will arise in the said industry. As discussed in Chapter 1 Uganda has put in place a regulatory framework to govern the OGI with PAU specifically responsible for OSH in the said industry while DOSH is responsible for OSH in the entire workplaces in the country. However, as noted in Chapter Four Uganda has not yet ratified most of the Conventions for workplace safety and the question which arises is whether the safeguards offered in Uganda's OSH legal framework are effective.

In this Chapter the study sought to understand whether the legal framework for safeguards with reference to SHCs as provided for in Uganda's regulatory framework is in harmony with international best practices for workplace safety.

The legal framework for SHCs in the OGI is provided for in OSHA, PEDPA and the regulations, namely, the Petroleum (Refining, Conversion Transmission and Midstream Storage), (Health, Safety and Environment) Regulations, 2016 and The Petroleum (Exploration, Development and Production), (Health, Safety and Environment) Regulation, 2016. In the next section the regulatory framework of SHCs in Uganda is evaluated in relation to international best practices in Norway and South Africa which are presented in Chapter Five.

### **6.1 Safety and Health Committees under OSHA**

OSHA imposes obligations and duties on all employers to take, as far as is reasonably practicable, measures for the protection of workers and the general public from the dangerous aspects of the



employer's undertaking at his or her own cost.<sup>230</sup> In particular, the employer is obliged to ensure that the systems in place are properly maintained, that the employees are given adequate information, trained and supervised and ensure as far as practical that the work environment is free of risks to health.<sup>231</sup> The courts in Uganda are yet to interpret the extent of the said duty. The decision of the English Court of Appeal decision in *Edwards vs National Coal Board* would be persuasive.<sup>232</sup> The court held that the said duty would be discharged where the employer can demonstrate that a risk assessment was carried out to establish the cost time and trouble to mitigate the risk balanced against any harm it may cause and the risk found to be insignificant. A similar finding was made by a South African court in *Jourbert vs Buscor Property Limited*.<sup>233</sup> By implication the employer is not required to ensure an absolutely risk-free working environment but only to the extent that is practically possible.

In furtherance of the employer's duty to ensure safety at the workplace, an employer of at least twenty workers is obliged to prepare and as often as may be appropriate, revise a written statement of policy with respect to the safety and health of employees while at work.<sup>234</sup> The employer is further required to consult safety representatives in the development of safety and health measures.<sup>235</sup>

However, unlike in South Africa where the procedure for appointment of safety representatives is clearly provided for in the OSH law, the minister responsible for labour in Uganda is yet to issue regulations prescribing the procedure for appointment of safety representatives under OSHA.<sup>236</sup>

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<sup>230</sup> The Occupational Health and Safety Act 2006, S.13 (1) (a)

<sup>231</sup> *Ibid*, S. 13(2)

<sup>232</sup> [1949] 1 ALL ER 743

<sup>233</sup> (2013/13116) (2016) ZAG PPHC 1024

<sup>234</sup> The Occupational Health and Safety Act 2006, S.14 (1) (a)

<sup>235</sup> *Ibid* S. 15(2)

<sup>236</sup> *Ibid*, S. 15(1)

While Section 15 of OSHA is seemingly couched in mandatory terms by the use of the word “shall” for the minister to issue the said regulations, the Uganda Supreme Court in *David B. Kayondo vs The Cooperative Bank Ltd* found that where the word “shall” is used in legislation without any sanction for non-compliance, it connotes a discretionary power on the person required to act.<sup>237</sup> The law does not provide for any time limit within which the minister should issue the said regulations or prescribe any penalty for not issuing them. Hence, by implication it is not mandatory for the minister to issue the regulations. It is therefore not surprising that the regulations which are critical for safety in the general work environment in Uganda are inexistent. By implication, the duty imposed on the employer to consult safety representatives on workplace safety measures only exists on the statute book.

To compound the problem further, the employers’ duty to establish SHCs at the workplace cannot be fulfilled as well because the said duty is pegged to the existence of safety representatives who cannot be elected in the absence of the said regulations.<sup>238</sup> An employer is only obliged to establish a SHC upon a request by a safety representative at a workplace employing at least twenty employees.<sup>239</sup> Furthermore, OSHA is silent on what happens should the employer ignore the request by the safety representative to establish a SHC. As the law currently stands the establishment of SHCs is at the employer’s pleasure. The void in the said law should have been cured by the issuance of the said regulations. However, as demonstrated in Chapter Four, Uganda is yet to ratify Convention 155 and it can be argued that there is no political will to put in place a legal framework for activation of SHCs at the workplace.

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<sup>237</sup>Civil Appeal No. 10 of 1991 (SC)

<sup>238</sup>The Occupational Health and Safety Act 2006, S. 16(1)

<sup>239</sup>Ibid

In the absence of the said regulations the duty imposed on the employer to establish a SHC at the workplace is not practical at all. This duty only exists on the statute book. Equally on paper and without any practical existence is the duty imposed on the representatives of the employers and the employees to accompany an inspector or any other person supervising the manner in which the safety measures are implemented by the employer.<sup>240</sup>

The missing regulations, like in Norway and South Africa would perhaps provide for the membership of the SHCs, their mandate on safety and health at the workplace, the employer's obligations to have the members of the SHC trained in safety matters, the leadership of the SHCs, the representation of the inspection agency on the committee, the frequency of the meetings, the duty to maintain the records of the SHCs and the supervisory role of the inspectorate department towards the SHCs among others, all which would constitute a legal framework for functional SHCs.

In the absence of the regulations providing for the appointment of safety representatives and establishment of SHCs, the observation by France Ncube and Artwell Kanda that the legislative framework for SHCs in most sub-Saharan countries including Uganda is such that the said safeguards are dysfunctional cannot be assailed.<sup>241</sup>

As the study demonstrates in the next two Sections the missing regulations for appointment of safety representatives under OSHA are linked to the inadequate legal framework for establishment of the SHCs in Uganda's upstream and midstream sectors.

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<sup>240</sup> The Occupational Health and Safety Act 2006, S. 17(2)

<sup>241</sup> France Ncube and Artwell Kanda, 'Current and the Future of Occupational Safety and Health Legislation in Low and Middle-Income Countries', *Safety and Health at Work*, XXX (2018) [www.researchgate.net](http://www.researchgate.net) accessed on 12<sup>th</sup> November, 2020

## 6.2 Safety and Health Committees in the Upstream Sector

PEDPA which regulates petroleum activities in the upstream sector imposes a duty on the licensee to conduct the petroleum activities in such a manner that enables the highest safety level as provided for in OSHA and the best petroleum industrial practices.<sup>242</sup> The licensee is among other things required to take steps as provided for in OSHA to prevent the exposure of persons at the workplace to any hazards.<sup>243</sup> In furtherance of the said duty, the Minister of Energy is mandated to issue directions to put into effect the said safety measures.<sup>244</sup> Accordingly, the minister issued the Petroleum (Exploration, Development and Production), (Health, Safety and Environment) Regulations, 2016 for OSH regulation in the upstream sector. The regulations provide for the establishment of SHCs at a facility conducting petroleum activities and employing more than twenty persons.<sup>245</sup>

The SHC consists of the representatives of the workers and licensee and mandated to among other functions to participate in the planning for the safety of the work environment and consider matters concerning safety, health, training and information at the workplace and the licensees' plan that have a bearing to the safety of the work environment that require the inspector's consent.<sup>246</sup> The safety representatives are mandated to play a crucial role of shutting unsafe operations until otherwise decided by the inspector or the unsafe situation is rectified to the satisfaction of the safety representative.<sup>247</sup> However, by law the membership of SHCs comprise of safety

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<sup>242</sup>PEDPA, S. 140

<sup>243</sup>Ibid, S. 141(a)(i)

<sup>244</sup>PEDPA, S. 142(3)

<sup>245</sup>S.I 46 of 2016, Regulation 164

<sup>246</sup> Ibid

<sup>247</sup>PEDPA, S. 163

representatives whose election is a responsibility of the licensee in accordance with the regulations issued by the minister under S. 15 of OSHA.<sup>248</sup> These regulations are inexistent.

The absence of the said regulations renders the existence of SHCs under PEDPA mootable. Besides, while the law places the duty on the licensee to ensure the election of safety representatives, the law does not provide for any sanction on the licensee for breach of the said duty or provide for any regulatory oversight by the inspector, like it is the case in Norway to ensure that the safety representatives are elected.<sup>249</sup> In the absence of any sanction for noncompliance and regulatory oversight, it is arguable that the existence of the safety committees in the upstream OGI is at the pleasure of the licensee. Given the current state of the law it is hard to disagree with the argument that SHCs only exist theoretically in the said sector and practically dysfunctional.<sup>250</sup> The conclusion here is that the legal framework for SHCs in the upstream sector does not support their functionality. In the next Section the legal framework for SHCs in Uganda's midstream sector is considered.

### **6.3 Safety and Health Committees in the Midstream Sector**

Petroleum activities in the midstream sector are regulated by PRCTMSA.<sup>251</sup> The licensee in the midstream sector is required to conduct operations in accordance with the highest standards of safety as prescribed in the law.<sup>252</sup> In this regard the licensee is obliged to identify risks at the workplace and take reasonably practical measures to ensure prevention of exposure by the persons employed to hazards.<sup>253</sup> The licensee is also required to take precautionary measures to ensure the

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<sup>248</sup>Ibid, regulation 162

<sup>249</sup>Ibid

<sup>250</sup>Ibid

<sup>251</sup>Act No. 3 of 2013

<sup>252</sup>Ibid, S. 63(1)

<sup>253</sup>Ibid, S. 63(2)

workers' safety.<sup>254</sup>To ensure that the safety measures are carried out the minister responsible for energy is mandated to issue directions prescribing the implementation of the said measures.<sup>255</sup>Accordingly, the Petroleum (Refining, Conversion Transmission and Midstream Storage), (Health, Safety and Environment) Regulations were issued in 2016.<sup>256</sup>

As is the case with the upstream sector, the said regulations among other safety measures require the licensee to ensure the establishment of SHCs in workplaces where more than twenty persons are employed.<sup>257</sup>The mandate of the SHCs in the midstream sector is to ensure that workers participate in the planning for safety at the workplace and their general welfare.<sup>258</sup>

The SHCs in the midstream sector are similarly among other things mandated to consider occupational health service at the workplace, workers' training in safety and safety information at the workplace.<sup>259</sup>Again, as is the case with the upstream sector, the regulations peg the membership of the SHCs to safety representatives whose election is required to be in accordance with the regulations issued by the minister responsible for labour under Section 15 of the OSHA.<sup>260</sup>

It can be argued that the implementation of preventive safety measures through SHCs at workplaces in the midstream sector is currently on a standstill and will remain so until the said regulations are put in place. The power reserved to a safety representative to halt any dangerous work in the midstream sector will similarly remain on paper until the minister of labour issues the regulations prescribing the manner of election of safety representatives.<sup>261</sup>

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<sup>254</sup> Ibid, S. 64

<sup>255</sup> Ibid, S. 66(3)

<sup>256</sup> S.I No. 35 of 2016

<sup>257</sup> Ibid, Reg 163(1)

<sup>258</sup> Ibid, Reg. 163(2)

<sup>259</sup> Ibid, Reg. 163(3)

<sup>260</sup> The Petroleum (Refining, Conversion Transmission and Midstream Storage), (Health, Safety and Environment) Regulations, 2016, Reg 161

<sup>261</sup>Ibid, Reg 162(1) (a)

## 6.4 Conclusion

Owing to the absence of regulations providing directions on the election of safety representatives who by law constitute SHCs, the legal framework for SHCs in Uganda's OGI does not support their functionality. As the law currently stands the existence of SHCs in the OGI in the absence of an enabling legal framework is at the pleasure of the licensees who may not be interested in their existence. SHCs have cost implications for training workers and the time spent by the workers on SHCs activities.<sup>262</sup> The licensee may not be keen in incurring the said costs. The participation of workers in their safety through SHCs is critical in ensuring safety in the hazardous OIG industry.<sup>263</sup> Uganda's OGI requires functional SHCs to promote safety at the workplace.

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<sup>262</sup>Nadine Milgate and others, 'Examining the effectiveness of health safety committees and representatives: a review', Research Gate (February, 2002) [www.researchgate.net](http://www.researchgate.net) accessed on 21<sup>st</sup> January, 2021

<sup>263</sup>Hanna Barbra Rasmussen and Others, 'Safety Representatives' Roles Dilemmas in Danish Oil and Gas Industry' (January, 2014) Policy and Practice in Health and Safety 12(1), Research Gate, [www.researchgate.net](http://www.researchgate.net) accessed on 20<sup>th</sup> January, 2021

## **CHAPTER SEVEN: FINDINGS, RECOMMENDATIONS AND CONCLUSIONS**

### **7.0 Study Findings**

The study set out to assess the regulatory framework for safeguards in Uganda's OGI to establish the role of international labour standards in the effectiveness of OSH legal framework in addressing workplace safety. Specific focus was made on Uganda's regulatory framework for SHCs, key safeguards in the OGI.

It was demonstrated that ILO has discharged its core mandate of providing for minimum safety standards for the workplace by way of Conventions. Uganda is yet to ratify most of the Conventions including Convention 155 and it has no legal obligation to adopt the international standards in its OSH legal framework.

The study also demonstrated that owing to the failure to ratify Convention 155 there are gaps in Uganda's OSH regulatory framework for SHCs. As a result of not ratifying the international standards Uganda's OSH regulatory framework does not support the functionality of SHCs in the work environment generally and in particular, the OGI. Going by the systems model theory of accidents, owing to the dysfunctional legal framework for SHCs there is a high probability of OSH incidents happening in the OGI.

The study also found that at the international level there are no uniform standards for the SHCs regulatory framework. The regulations for appointment of safety representatives in South Africa are not a replica of the regulations for appointment of safety representatives in Norway. The bottom line however, is that both countries have put in place a legal framework enabling workers' representatives to intervene in workplace safety.

Uganda has a lot to learn from the legal framework for SHCs in Norway and South Africa in order to improve its regulatory framework for the said safeguards. The two countries embraced



international standards and provided for robust legal frameworks enabling the operations of SHCs. As demonstrated above, the same safeguards are yet to be activated in Uganda's OSH legal framework in general and in particular the OGI.

The failure to ratify the international standards is not only reflected in the dysfunctional SHCs but other key OSH safeguards as well. According to the Auditor General of Uganda, labour inspections under OSHA were as of 2016 dysfunctional while penalties for OSH breaches under the said law are not deterrent.<sup>264</sup> It is not clear whether any improvements have since been made.

In general, the current ineffective legal framework for safeguards can be attributed to Uganda's failure to ratify international labour standards. Otherwise, with the ratification of the said standards the country would be obliged to adopt a legal framework that enables the safeguards provided for to serve their designed purpose of mitigating risks in the working environment.

The study conclusion is that an OSH legal framework for safeguards based on the international safety standards is a key factor for a harmonious safety system offered in the work environment and that the absence of an adequate legal framework for workplace safety is a recipe for an unsafe work environment in Uganda's OGI.

## **7.1 Recommendations**

### **7.1.1 A renewed OSH approach**

Uganda should take OSH seriously by ensuring that the legal framework for safeguards serves its intended purpose of preventing injuries, diseases and fatalities at the work place. The wellbeing of the workers in the OGI cannot be achieved without an adequate OSH legal framework that provides for the minimum safety standards.

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<sup>264</sup>*Supra*, (n 176)

### **7.1.2 Domestication of OSH international standards**

In order to achieve a robust OSH legal framework for safety in the OGI, Uganda should make a policy shift and ratify all the international standards for workplace safety. The ratifications including Convention 155 will ensure that the country adopts the international standards in its OSH legal framework and empower the workers to participate in workplace safety arrangements. With the ratification of Convention 155 the country would be obliged to have a national OSH policy which is currently not in place. The said policy workplace safety measures would be reviewed from time to time as required by the said Convention and this would greatly contribute in enhancing workplace safety.

### **7.1.3 Amendment to OSHA**

Section 15 of OSHA should be amended to provide for a timeframe within which the minister responsible for Labour should issue regulations governing the appointment of safety representatives. One year should be sufficient for the minister to conduct the necessary studies and ensure that the said regulations are issued. As discussed in Chapter Six the issuance of the said regulations will in turn activate the appointments of safety representatives under the Petroleum (Exploration, Development and Production), (Health, Safety and Environment) Regulations and the Petroleum (Refining, Conversion Transmission and Midstream Storage), (Health, Safety and Environment) Regulations.

### **7.1.4 Regulatory Best Practices for Safety Health Committees**

The regulations for WEC in Norway and HSCs in South Africa offer best regulatory practices for SHCs in Uganda's OGI. The Minister of Gender Labour and Social Development who is responsible for labour should benchmark the regulatory frameworks of the said committees in the

said countries with a view to establish what in the said regulations is workable for Uganda and come up with a hybrid version of the said regulations for regulation of SHCs in Uganda.

#### **7.1.5 Further Research**

Scholarly research needs to be done on the effectiveness of the other safeguards such as penalties for OSH breaches in the OGI. This researcher did not find any studies on penalties in PEDPA, PRCTMSA and the regulations under the said laws to establish their contribution to the safety of the upstream and downstream sectors and in particular, the effectiveness of the said penalties in relation to the international labour standards. Deterrent penalties which are envisaged under Convention 155 are critical for a safe working environment. A study of the said penalties may lead to recommendations for reforms in the said laws for improvement of OSH in the upstream and midstream sectors of Uganda's OGI.

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